

### VICINITY MAP



**Directions:**

From Leesburg, take Route 7 east to the Dulles Town Center / Atlantic Boulevard interchange. Merge onto Atlantic Boulevard. The property is on both sides of Atlantic Boulevard. Alternate access to the site is from Nokes Boulevard by means of Route 28 or from City Center Boulevard.

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## CONCLUSIONS

1. This application will define the boundaries of the Urban Center and provide for its evolution from the approved, horizontally mixed-use, suburban development to the proposed vertically integrated community built within an urban design framework, consistent with that envisioned by the Revised General Plan.
2. The percentages of civic and public uses are not in conformance with the Land Use Mix anticipated by the Revised General Plan for the Urban Center. Uses proposed as Civic do not meet the definition noted in the Revised 1993 Zoning Ordinance.
3. The application does not provide for adequate mitigation of impacts to capital facilities consistent with the adopted Capital Intensities Factors.
4. The application provides facilities, including a Mass Transit Facility and Commuter Parking Lot, that will encourage the expansion of transit service as recommended by the Revised Countywide Transportation Plan.

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**CONDITIONS OF APPROVAL (SPEX 2008-0048) – July 16, 2010**

1. **Substantial Conformance** – This Special Exception to permit development of hotel / motel uses shall be developed in substantial conformance with Sheet 17 of 18 (the "Special Exception Plat") of the plan set entitled "Dulles Town Center Zoning Map Amendment Application," dated January 17, 2007, revised through June 30, 2010, prepared by Dewberry (the "Plans"), and incorporated herein by reference. These conditions shall supersede previously approved special exception conditions of approval for SPEX 1991-0045, Dulles Town Center Hotels. Approval of this application for Tax Map Numbers /80//36/////2/ (PIN #041-40-8718), /80//23/////B1/ (PIN #029-35-5034), and /80//36/////3/ (PIN #029-45-5622) (the "Property") shall not relieve the Property from the obligation to comply with and conform to any other Zoning Ordinance, Codified Ordinance, or applicable regulatory requirement.
2. **Acreage Limitation** – Hotel uses shall be limited to 11.51 acres of the "DEVELOPMENT AREA," the location of which shall be at the discretion of the Applicant so long as the uses are retained within Land Bay OP-3 or OP-2 in the area identified on the Special Exception Plat as "LIMITS OF SPECIAL EXCEPTION FOR HOTEL/MOTEL."
3. **Exterior Lighting** – Any exterior lighting installed on the Property shall be full cutoff and fully shielded light fixtures as defined by the Illuminating Engineering Society of North America (IESNA). Light shall be directed inward and downward toward the interior of the property, away from nearby properties. The Applicant shall power down all exterior lights on the Property excluding security lights during the closed hours of operation.

Note: The applicant has agreed to contribute \$.10 per square foot of development to the servicing Fire and Rescue Company. The contribution shall be divided equally for fire and rescue services. The \$.10 per square foot contribution will escalate annually based on the Consumer Price Index for all urban consumers (CPI-U), 1982-1984+100 (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics for the Washington-Baltimore area (base year of 1988) in accordance with Board policy, and such contributions shall be made before issuance of zoning permits for phased development of the project.

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**CONDITIONS OF APPROVAL (SPEX 2008-0047) – July 16, 2010**

1. **Substantial Conformance** – This Special Exception to permit development of an automotive service station use shall be developed in substantial conformance with Sheet 16 of 18 (the “Special Exception Plat”) of the plan set entitled “Dulles Town Center Zoning Map Amendment Application,” dated January 17, 2007, revised through June 30, 2010, prepared by Dewberry (the “Plans”), and incorporated herein by reference. Approval of this application for Tax Map Number 80////////97/ (PIN #029-25-1669) (the “Property”) shall not relieve the Property from the obligation to comply with and conform to any other Zoning Ordinance, Codified Ordinance, or applicable regulatory requirement.
2. **Exterior Lighting** – Any exterior lighting installed on the Property shall be full cutoff and fully shielded light fixtures as defined by the Illuminating Engineering Society of North America (IESNA). Light shall be directed inward and downward toward the interior of the property, away from nearby properties. The Applicant shall power down all exterior lights on the Property excluding security lights during the closed hours of operation.

Note: The applicant has agreed to contribute \$.10 per square foot of development to the servicing Fire and Rescue Company. The contribution shall be divided equally for fire and rescue services. The \$.10 per square foot contribution will escalate annually based on the Consumer Price Index for all urban consumers (CPI-U), 1982-1984+100 (not seasonally adjusted) as reported by the United States Department of Labor, Bureau of Labor Statistics for the Washington-Baltimore area (base year of 1988) in accordance with Board policy, and such contributions shall be made before issuance of zoning permits for phased development of the project.

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Summary of Responses to Outstanding Issues Identified in 9/17/2009 Staff Report  
Updated 4/20/2010, subsequent to meeting with S. Gardner on 4/15/2010

Outstanding Issue	Staff Recommendation	Applicant Response
Civic Use in PD-TC district is not adequate. Only 6% is proposed.	Plan policy recommends 10%	<p>The applicant proposes acknowledgment of an additional portion of Hadley's Park as Civic use. This results in 6% Civic space and still retains 15% Open space; the requested modification has been revised accordingly.</p> <p>The total Open Space and Civic Space proposed is 21%. While there is less Civic Space than recommended, there is more Open Space. Additionally, the large sidewalks and the features located on such sidewalks will act as Civic space, even though we have taken no credit for these gathering places.</p>
Civic Use in PD-OP is not adequate	Identify 2 acres of additional civic space; incorporate commitment into proffers.	The Concept Plan now specifies that 5% of land area will be provided as plazas and gathering areas.
CC-1 Land Bay is planned for Destination Retail	Eliminate CC-1 Land Bay from application or improve design commitments.	<p>The Design Guidelines are revised to ensure that CC-1 Land Bay functions as gateway to Urban Center; commitments regarding landscaping, building orientation, screening and statement of purpose have been incorporated.</p> <p>A commitment to providing 70% of the block frontage along Dulles Center Blvd., at full build out, as a wall – either building or landscaped wall – between buildings is provided. This is on top of a commitment to 4-sided architecture.</p>
Ensure that office is prominent on Route 7.	Recommend commitment to .5 FAR in TC-1	<p>While some flexibility to transfer office space between land bays in provided in the proffers, a commitment to retain minimum office square footage equivalent to .55 FAR is included.</p> <p>Proffers have been revised to commit to a minimum of .5 FAR in TC-1 at</p>

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Outstanding Issue	Staff Recommendation	Applicant Response
Phasing in TC District allows residential development exceeding 650 units, once 1,000,000 of non-residential is constructed in either the TC or OP districts.	Residential exceeding 650 units would be acceptable after 500,000 sf of non-residential, but it must be in TC district.	<p>We agree to wait until 1,000,000 sf of non-residential to exceed 650 dwelling units but believe that phasing should relate to the larger project. There are other commitments ensuring horizontally and vertically mixed residential land use including:</p> <ul style="list-style-type: none"> <li>• 200 units (minimum) in TC-2, fringe (where ground floor retail is required on portion of the street).</li> <li>• 100 units (minimum) in mixed use buildings in town center core</li> <li>• A maximum of 450 units are permitted in the TC-3 land bay</li> </ul>
Buy-out from tax district	Staff will provide a number	Agreed
Design Guidelines should address pedestrian uses along public spaces as well as streets.	Need additional commitment to pedestrian oriented uses and continuous facades adjacent to public spaces	Design Guidelines commit to 70% pedestrian oriented uses along the Civic Plaza and 40% facing the Town Green.
Provide minimum height for office buildings in OP and TC districts	Commitment to 4-stories as minimum needed in proffers	Proffers have been revised to include this commitment.
Limit height of residential buildings facing Hadley's Park.	Residential buildings facing Hadley's Park should be limited to 60' (as is TC-3 land bay)	Height limitations are specified in the Design Guidelines and are further restricted by the zoning modifications.
Commitment to height limitations	Include height limitations in proffers	Height limitations are specified on the CDP on proffered sheets and so are binding. (The CDP is an exhibit A to the proffers)



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Outstanding Issue	Staff Recommendation	Applicant Response
Parking should not be adjacent to public spaces	Proffers should include this commitment. Consider proffering language in Design Guidelines (pp 2-16 and 4-4)	Proffers revised to provide assurance of appropriately placed and clad parking structures by specifically referencing the detailed language in the Design Guidelines  Additional design guideline language desired to ensure that parking structures facing the town green, civic plaza, type A street and, "to the extent practicable" type B street.
Trail Width	Should be 10' in width	Eight foot trails are proposed consistent with VDOT provision of 8' trails on the Nokes crossing of Route 28.
Sidewalks along Hadley's Park	Should be 8' in width	Revised as requested
ADUs	Need more affordable housing than required by the Zoning Ordinance	ADUs will be provided as required by the Zoning Ordinance
Cap Facilities	Need current number	Because this case was submitted in early 2007 and has been under consideration since then, with extensive revisions made in response to County requests, we appreciate consideration of applying the pre-July, 2009 capital facilities policy. The case was heard a public hearing at the Commission's next public hearing after the July date. Further, we note that on several occasions, delays in staff review exceeded 60 days.
<b>Zoning</b>		
Modifications opposed	1. Increased lot coverage in Town Center fringe. 2. Increased height in CC-1 land bay.	These modifications are critical to the design that we believe is desired by the county and was approved in the One Loudoun application. Additional revisions have been made to 1) strengthen commitment to minimum FAR in TC-1, and 2) strengthen design commitments in CC-1. The Concept Plan is



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	3. Reductions in yard/buffers in CC-1 land bay.	being revised to clarify that although any one subdivided parcel in the Town Center fringe may exceed a 0.7 lot coverage, the overall lot coverage in the Town Center fringe shall not exceed 0.7.
Inclusion of Kent Drive; discrepancy in parcel size	Resolve discrepancy	A note has been added to the plat clarifying the inclusion of Kent drive.
Density transfer	Should be limited to ensure that the core remains more dense than the fringe	The transferability table has been revised to increase non-transferable square footage.
Proffer audit	Staff requests a draft proffer audit	A memo summarizing satisfaction of prior proffers may be submitted under separate cover.
<b>Environmental</b>		
Stream Valley Plan	Remove note connecting implementation of the Stream Valley Plan to separate Parc Dulles II case.	Revised as requested.
Stream Valley Plan / Tree Conservation Area	Notes regarding removal of vegetation and maintenance are needed and appear to have been removed.	The stream valley plan has been updated to reflect the most current Chesapeake Bay Preservation Area language in County review. Consistent with this language, 3 gallon Canopy Trees will be provided at 150 plants per acre within the Reforestation Areas. Additional language was provided to require the re vegetation plans to address site preparation, maintenance, and wildlife damage.
BMP	If existing facilities are used for storm water management, they should	Existing facility not to be used for SWM or BMP for the subject Property. Proffers already state that all SWM for the project will meet current standards and that no BMP credit will be taken for the existing facility,

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	be brought up to current standards	unless it is upgraded to a wet pond.
BMP	Pond should be upgraded to improve water quality, even if not intended for BMP.	While upgrades to the existing pond are not proposed unless it is to provide BMP for any new development, extensive cleanout has been completed.
Wetland mitigation	Want firmer commitment to mitigate in the County	The proffers commit to mitigation consistent with state and federal standards. The Virginia General Assembly has addressed the issue of requiring mitigation in Loudoun County.
EMS. Fire/Rescue station site	Staff has requested one at DTC	Because 2 PPEA applications are under review, we have inquired as to whether a fire/rescue site is still desired at DTC, but additional guidance on this matter has not been provided.
Parks. Vestals Gap Park	Wants commitment to clean up debris and trash.	Proffer has been revised as requested.
<b>Transportation</b>		
Transit Station proposed in relation to development of non-residential uses	Staff requests that the transit station be concurrent with Metro	Commercial development is needed to support financing of the transit station.
Traffic Study	Proffer to all improvements assumed in the traffic study 1. Improvements on some local streets assumed	Staff requested a revised traffic study, and additional analysis will be provided when available.



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Outstanding Issue	Staff Recommendation	Applicant Response
	2. Lanes in traffic study inconsistent with CPAP	
Park and ride lot	Staff recommends that the park and ride be constructed now and that the 2 <sup>nd</sup> 200 spaces to go forward within 120 days.	The timing and scope of this proffer was previously negotiated with OTS.
Internal bus circulator system	Recommend commitment to such a system	The issue of a circulator bus system in Loudoun County is a larger policy plan issue that needs further countywide discussion.



# MEMORANDUM

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**TO:** Stephen Gardner, Department of Planning (#62)

**FROM:** Larr Kelly, Zoning Division, Department of Building and Development (#60)



**DATE:** April 8, 2010

**RE:** ZMAP 2007-0001/SPEX 2008-0047/SPEX 2008-0048: Dulles Town Center

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As requested, I have reviewed the revised draft proffers, dated February 8, 2010, for the above referenced Zoning Map Amendment application. Pursuant to this review, I offer the following comments:

1. In regard to the preamble, I note that the applicant has made the proffers contingent on receipt of approval of the Zoning Map Amendment application and both of the above referenced Special Exception applications. Staff should ensure that the Board of Supervisors is aware of this provision in the event that either of the Special Exception applications is recommended for denial while the Zoning Map Amendment is recommended for approval.
2. In further regard to the preamble, I note that this rezoning removes a portion of Dulles Town Center from the existing Dulles Town Center Proffers, resulting in differing proffers for different portions of Dulles Town Center. I suggest that a proffer audit be conducted to ensure that no existing proffers within Dulles Town Center, especially the phased transportation proffers, fail due to the removal of this portion of Dulles Town Center from the existing proffers, or whether any existing proffers are past due, such as the access to Loudoun Tech Center.
3. In regard to proffer I.A., I note that while a number of sheets are proffered, Sheet 14 is not proffered, and this is the sheet which shows the number of levels planned for each building. I suggest that the number of levels of the buildings be included in the proffered materials.
4. In further regard to proffer I.A., I note that Sheet 16 is the Special Exception Plat for Automotive Service Station use and Sheet 17 is the Special Exception Plat for the Hotel/Motel use. I further note that these proffers are contingent on approval of these special exception uses, but the status of these two sheets is unclear. I suggest that staff include conformance with these two sheets as a condition of approval of the special exceptions.

5. In regard to proffer I.B., I note that the applicant has indicated the intent to provide 1,230 residential units on the Property, inclusive of any required ADU's. I suggest that the term "Affordable Dwelling Units" be used prior to the use of this acronym. However, I also note that Sheet 14 of the Concept Plan shows all of the residential structures as being four stories or higher. Section 7-102(D)(1) exempts from the ADU requirements "any multiple family dwelling unit structure with four (4) stories or more and having an elevator". Given this language, there may be no ADUs provided by this project if they include elevators in all of their buildings. I urge staff to consider the appropriateness of this and I suggest that the applicant consider proffering to some minimum number of ADUs.
6. In further regard to proffer I.B., in the third line of the second paragraph thereof, I suggest that the phrase "date hereof" be changed to "date of approval of this application". Additionally, in the last two lines of the paragraph, I suggest that the phrase "provided such materials are commonly accepted by the disposal company servicing the property in question" be changed to read "for such materials as are commonly accepted by the disposal company hired by the Owners to service the multi-family units. The Owners shall ensure that such company engages in recycling as well as waste disposal".
7. In regard to proffer I.C., in the first line thereof, I suggest that the phrase " , within the respective zoning districts," be inserted following the phrase "may include".
8. In further regard to proffer I.C., in the last sentence thereof, I note that the applicant has stated that the Community Center in the TC-3 Land Bay and the Mass Transit Station shall not count against approved non-residential square footage. I do not see how the Mass Transit Station is anything but a non-residential use. Sheet 11 currently shows maximum non-residential square footage for the various land bays. I suggest, if these facilities are not to be counted against the non-residential square footage, that a separate column be added to the table on Sheet 11 to account for them under separate categories. Additionally, Section 4-808(F) requires that between 25% and 50% of the total land area of the district be provided as residential. It is currently not clear how this requirement is being met, and it becomes less clear if uses that are not residential do not count as non-residential. I suggest that this be clarified.
9. In further regard to proffer I.C., I note that Sheet 11 of the CDP includes a statement that "following abandonment of Dulles Center Boulevard right of way, the land area shall be added to Land Bay OP-1 at a .6 floor area ratio". This is problematic for a couple of reasons. First the project cannot be approved for density exceeding that which was advertised. Since there is no specific amount of additional floor area clearly identified I presume that the additional



square footage was not advertised. Secondly, this proffer gives specific limits to permitted square footage of non-residential uses in the PD-OP Zoning District. As written, this note would violate the specific language of the proffer. Additionally, this land area is currently owned by Loudoun County, and is not included in the application. While the right of way could be conveyed by the County to the applicant, the land would not be subject to these proffers. I suggest that this note be deleted.

10. In further regard to the tables on Sheet 11., I note that the applicant has included a table that shows transfers of density between Land Bays TC-1 and TC-2. While this is acceptable as far as it goes, I suggest that there needs to be a commitment that ensures that the Core will end up with more density than the Fringe. This is not clearly provided. The Town Center District is designed to have the densest development in the Core and this table, as written, does not ensure that this will happen. I suggest that this be rectified.
11. In regard to proffer I.D.2.b., concerning a restaurant in the proposed hotel, I note that the proffers state that there will be a restaurant that will "be a minimum of 1,000 sf unless there shall exist elsewhere in Land Bays TC-1 and TC-2 a restaurant of at least 4,000 sf." It is not clear if the applicant's intent is to mean that if there is a 4,000 square foot restaurant elsewhere in Land Bays TC-1 or TC-2 then there will be no restaurant in the hotel or that the 1,000 square foot minimum size for the restaurant will not apply. I suggest that the intent be clarified.
12. In regard to proffer I.D.3., I note that the applicant has indicated that they may construct 775,000 square feet of permitted PD-OP uses in Land Bay OP-1, but that they must include 1.5 acres of Land Bay OP-1 in the Tree Conservation Area for the Property in order to exceed this amount of development. An additional 1.5 acres of Land Bay OP-1 must be included within Tree Conservation Area in order for development in Land Bay OP-1 to exceed 875,000 square feet. However, the CDP does not show any Tree Conservation Area for Land Bay OP-1. Proffer IX.B. only requires that a Tree Conservation Plan be submitted for parcels showing Tree Conservation Areas on them. I suggest that the applicant's proposed three acres of Tree Conservation Area for Land Bay OP-1 be shown on the CDP.
13. In regard to proffer I.D.4., I note that the applicant refers to "all office buildings" and states that they shall all be constructed to a minimum of four stories. I question whether this reference is intended to refer to buildings that are office/retail mixed use buildings as well. I suggest that this be clarified.
14. In regard to proffer I.D.5., in the second line thereof, I suggest that the phrase "the extent practicable to" be deleted, so that the structured parking will be



consistent with the Design Guidelines, which already say that they shall be followed to "the extent reasonably practical". In addition, in the fifth line of the proffer, I suggest that the phrase "Route 28 Corridor and consistent" be changed to "Route 28 Corridor, and shall be consistent"

15. In regard to proffer I.D.6., I note that the applicant has indicated that the right-of-way for Dulles Center Boulevard, between the Route 28 right-of-way and the Atlantic Boulevard right-of-way, "shall be abandoned and, upon application, re-conveyed to DTC Partners, LLC or its designee", that such land area "shall be added to OP-1 Land Bay", and that "the permitted square footage of development within OP-1 shall be increased by the area of such abandoned right of way multiplied by .60". Proffers are zoning regulations that apply to specific properties that are voluntarily agreed to by the landowner. As such, they are unilateral commitments and are not designed to reflect commitments on the part of the County. At best, the applicant can commit to submitting the request for the abandonment. I suggest that who is to be responsible for the cost of proceedings to abandon the right of way also be addressed. Further, as this right-of-way is currently owned by the County, and not the applicant, it is not subject to this application and proffers. If this land area is to be integrated into this development and allowed to develop at a .60 FAR, I believe that it needs to be subject to these proffers. I also note that Section 33.1-165 of the Code of Virginia allows for right-of-way to be abandoned, and that the County is then free to sell the land for consideration or for the exchange of other land. Section 15.2-2272 of the Code of Virginia allows for the vacation of right-of-way, in which case the land goes 50-50 to the abutting landowners. If this latter method is pursued, then the agreement of the 1 Dulles Town Center LLC would be needed to allow for the land to go 100 percent to Land Bay OP-1. Either way, this proffer does not appear to contemplate all of the intricacies of what is being proposed.
16. In regard to proffer I.E.2., in the first two lines thereof, I suggest that the phrase "Prior to an Owner being able to obtain a zoning permit for the 1,000,000<sup>th</sup> square foot of non-residential use within" be changed to "Prior to the issuance of the zoning permit for the 1,000,000<sup>th</sup> square foot of non-residential uses within". I also note that based on a previous proffer, the square footage of the Community Center and the Mass Transit Facility will not count towards meeting this 1,000,000 square foot requirement.
17. In regard to proffer I.E.2.a., in the third line thereof, I suggest that the phrase "limitations set for in this section following the issuance" be changed to "limitations set forth in this section. Following the issuance".
18. In further regard to proffer I.E.2.a., in the last two lines thereof, I suggest that the phrase "residential units in excess of 650 may be developed" be changed to

**"the Owners shall be permitted to obtain zoning permits for all residential zoning permits on the Property".**

19. In regard to proffer I.E.3., I find the applicant's intent to be unclear. It appears that the intent is that, notwithstanding the preceding proffer which limited residential development to 650 units unless the Property has been developed with more than 1,000,000 square feet of non-residential development, the applicant is to be allowed to develop all 780 dwelling units in Land Bays TC-1 and TC-2 if such units are in the Core and the buildings in which the units are located have at least 60% of the ground floor frontage designed for non-residential uses. However, it is not clear if these units are intended to count against the 650 unit cap prior to the issuance of the 1,000,000<sup>th</sup> square foot. If they do not, then this proffer essentially negates the previous proffer and its linkage.
20. In regard to proffer I.E.4., in the first line thereof, I suggest that the phrase "Prior to Owner being" be changed to "Prior to the Owners being".
21. In regard to proffer II.A.2., in the first line thereof, I note that it states that the Owners shall "be permitted to convert" Dulles Center Boulevard from its intersection with City Center Boulevard to its intersection with Atlantic Boulevard to a privately owned and maintained roadway. Inasmuch as the Owners do not own City Center Boulevard, as it is owned by the County, I believe that this proffer faces the same issues as the abandonment of the portion of Dulles Center Boulevard adjacent to Land Bay OP-1 faces, and it is not up to the applicants to "convert" the road to a private roadway. The applicant may request the County to abandon or vacate the right of way. However, if is abandoned then the County continues to own it until it is sold or exchanged for consideration. If it is vacated, then it goes 50-50 to the adjoining property owners, and a portion of such right of way fronts property that is off-site to this application.
22. In further regard to proffer II.A.2., in the third and fourth lines thereof, I note that the applicant states that they "shall be permitted to implement those traffic calming and other measures set forth in the Design Guidelines". However, there is nothing in the Design Guidelines identified as "traffic calming measures". Therefore, I suggest that the phrase "shall be permitted to implement those traffic calming and other measures set forth in " be changed to read "shall implement the".
23. In further regard to proffer II.A.2., in the fifth line thereof, the applicant uses the phrase "if VDOT will not permit the conversion". However, the determination to abandon a roadway appears to be a County determination, not a VDOT determination. I suggest that this provision be changed to reflect this.



24. In further regard to proffer II.A.2., in the seventh through ninth lines thereof, I note that the applicant has included a sentence that ostensibly removes an existing proffer from property that is not subject to this application. This cannot be done and I suggest that this sentence be deleted.
25. In further regard to proffer II.A.2., in the eleventh line thereof, the applicant has included a provision by which they are indicating that the County must re-convey the right of way to DTC Partners, L.L.C. if VDOT agrees to the conversion of the roadway to a private road. Again, I do not see this as a VDOT call, nor are the proffers to reflect the commitments of the County. I suggest that the applicant indicate the intent to request that the County abandon the right-of-way and otherwise indicate what it is that they are committing to do, rather than what the County is supposedly committing to do.
26. In further regard to proffer II.A.2., I note that the applicant has indicated that any portion of Dulles Center Boulevard converted to a private roadway shall be maintained by the "Property Owners' Association (as defined in Proffer \_\_\_\_\_ below)". I also note that the applicant has specified who is supposed to own the right of way, but is assigning the responsibility for maintenance of the right of way to a third party that is not subject to these proffers or this application. This is not appropriate. Furthermore, the applicant, I believe, intended to refer to Proffer VII, Owner's Association, as the place where the "Property Owners' Association" is defined. However, that proffer mentions the "Dulles Town Center Owner's Association" as the POA, while in the existing proffers, there are requirements for a Homeowners' Association and a Property Owners' Association mentioned, and it is not clear which entity is now being referenced. I suggest that this be clarified. Inasmuch as the entity is not party to these proffers and does not own any of the Property, I suggest that maintenance of the right-of-way needs to be the responsibility of the Owners.
27. In further regard to proffer II.A.2., I note that while the applicant has used the term "Property Owners' Association" they have not identified this phrase with its acronym "POA", yet uses this term in a number of places following this proffer. I suggest that if the applicant is going to use "POA" as a term of art, that they identify it as such herein.
28. In regard to proffer II.B., concerning the Pedestrian Network, I note that the network shown on Sheet 15 shall be provided either within the existing right-of-way or outside of the right-of-way. I suggest that if a portion of the network is located outside of the right-of-way, then such portion should be located within a public access easement dedicated to the County.



29. In further regard to proffer II.B., in the last sentence thereof, I note that the applicant contemplates "assigning" the responsibility to maintain the pedestrian network to the POA. However, since the Owner's Association is a separate entity that already exists, it seems to me that the POA will have to be willing to assume this responsibility, and I suggest that the word "assigned" be changed to "assumed".
30. In further regard to proffer II.B., I note that a portion of the pedestrian network is off-site from the Property. I suggest that the applicant indicate that they shall be responsible for acquiring any off-site right-of-way or public access easement necessary for the construction of such portion of the pedestrian network.
31. In further regard to proffer II.B., I note that the existing proffers require that lighting be provided on trails, but that no such provision is included herein. Since some of the network is off-site and already constructed, I presume that those lights have been installed. As written, these proffers mean that a portion of the pedestrian network will be lit, while other portions will not be lit. I suggest that the appropriateness of this be reconsidered. I suggest that lighting for all of the trails be provided.
32. In regard to proffer II.C.1., in the first line thereof, the applicant references "paragraph I.E.7.a. above". However, there is no such proffer. I believe the intent was to reference "paragraph I.E.1.a". If so, I suggest that this change be made. If not, then I suggest that the applicant's intent be clarified.
33. In further regard to proffer II.C.1., in the second and third lines thereof, I suggest that the phrase "within 120 days of approval of this application (ZMAP 2007-0001)" be deleted, as this is not in full conformance with the language of proffer I.E.1.a., which includes certain contingencies to the 120 day commitment. By deleting this phrase, the inconsistencies between this proffer and proffer I.E.1.a. would be eliminated.
34. In further regard to proffer II.C.1., in the fourth and fifth lines thereof, I suggest that the parentheses around the phrase "with a minimum of 100 parking spaces" be changed to commas.
35. In further regard to proffer II.C.1., I note that the applicant has indicated the intent to place a commuter parking lot in Land Bay OP-1 in the location shown on Sheet 7 of the CDP. However, this statement is not accurate as Sheet 7 shows the commuter lot as being located in the existing right-of-way for Dulles Center Boulevard, not Land Bay OP-1. The applicant has also indicated the intent to grant the County a public access easement over the commuter parking lot, which is to be built on land that is currently owned by the County, but which the applicant has requested that the County convey to them. I suggest

that if the right-of way is abandoned as a roadway, it should remain the County's land, and that the applicant should consider proffering to construct the commuter parking lot on County owned land. Additionally, I note that the current proffers already require that a commuter lot be constructed, and that the trigger for its construction has happened. I question where the already required parking lot is to be constructed.

36. In further regard to proffer II.C.1., in the last line thereof, I suggest that the phrase "of the above mentioned site plan application" be added to the end of the proffer.
37. In regard to proffer II.C.2., in the first through third lines thereof, I suggest that the phrase "prior to the issuance of the zoning permit for the 1,000,000<sup>th</sup> square foot of non-residential development within the PD-TC and/or PD-OP zoned portions of the property" be deleted in order to ensure that there is no conflict between the provisions of this proffer and the timing mechanism previously mentioned in proffer I.E.2.b. If it is not deleted, at a minimum, the word "property", found in the third line of the proffer, needs to be changed to "Property".
38. In further regard to proffer II.C.2., in the fourth line thereof, I suggest that the phrase "to the County and diligently pursue approval for" be changed to "to the County, and diligently pursue its approval, for".
39. In further regard to proffer II.C.2., in the sixth through tenth lines thereof, I note that the applicant is seeking a Capital Facilities Credit for the appraised value of land and facilities associated with an additional 100 parking spaces and for the maintenance of the 100 parking spaces based on a twenty year budget agreed upon by the County and the POA. I do not see the logic in this. The applicant is asking the County to convey the land to them, and then to get a Capital Facilities Credit for granting an access easement over the land the County just returned to them. Further the applicant wants a credit based on expenses that are to be incurred by the third party POA. I suggest that this should not be accepted. Furthermore, even if this were to be accepted, I fail to understand why this is being stated in this proffer, rather than figuring the Capital Facilities Credit and adjusting the Capital Facilities Contribution accordingly. This calculation should not be left until the time of the contribution. It should be known before the proffers are accepted.
40. In further regard to proffer II.C., generally, I note that there is nothing in this section to indicate that the commuter parking lot will conform to the Design Guidelines. I suggest that this be considered.



41. In regard to proffer II.D.1., in the second line thereof, I suggest that the reference to "paragraph I(E)(4)" be changed to "paragraph I.E.4."
42. In further regard to proffer II.D.1., in the second line thereof, I suggest that the phrase "the zoning permit for the" be inserted prior to the phrase "2,000,000<sup>th</sup> square foot".
43. In further regard to proffer II.D.1., in the third line thereof, I suggest that the phrase "any required application" be changed to "all required applications, including the requisite Special Exception application,".
44. In further regard to proffer II.D.1., I note that there is no description of what the Mass Transit Facility is to contain. The only description of the Facility is contained in the Design Guidelines, yet there is nothing in the proffers to indicate the intent to construct the Facility in accord with the Design Guidelines. I suggest that this be included.
45. In further regard to proffer II.D.1., I note that the applicant has indicated that they shall receive a credit against their Capital Facilities Contribution for the value of the land and 20 years worth of maintenance on the facility by the POA. Yet, the applicant intends to only provide a public access easement over the land and not dedicate the land, and the applicant is not going to be the entity maintaining the facility. I do not see why a credit should be given for land the County does not own or for maintenance the applicant is not performing. Further, if such credit is to be given, it should be calculated at this time and figured into the proposed Capital Facilities Contribution rather than leaving it to be determined by the permits counter at the time of application for zoning permits.
46. In further regard to proffer II.D.1., and its relation to proffer II.D.3., I note that the applicant is contemplating closing the Rt. 28 Commuter Parking Lot and moving it to the Mass Transit Facility. In such case, the applicant anticipates receiving a Capital Facilities Credit for such parking lot. However, the applicant has also indicated that they anticipate a credit for the Rt. 28 Commuter Parking Lot. In essence, the applicant is requesting to receive two Capital Facilities Credits for one Commuter Parking Lot. I find this to be inappropriate. Again, I suggest that the value of the lot, wherever it resides, be determined now, and that its value be calculated into the proposed Capital Facilities Contribution.
47. In regard to proffer II.D.2., in the first line thereof, the applicant refers to a "Mass Transit Center". It is not clear if this is intended to be the same as, or different from, the "Mass Transit Facility". If it is the same, then I suggest that

the same terminology be used. If it is intended to be different, I suggest that the difference be clarified.

48. In regard to proffer II.D.2.b., I note that the applicant has referenced a "Transit Center". Again, it is not clear if this is the same as the proposed "Mass Transit Facility". I suggest that this be clarified.
49. In regard to proffer II.D.3., in option i), I suggest that the second sentence be deleted as it repeats what is already set forth in proffer II.D.1.
50. In further regard to proffer II.D.3., in option ii), I note that the applicant is proposing to provide 300 commuter parking spaces, but at their option they intend to locate such spaces either at the Rt. 28 Commuter Parking Lot, or at the Mass Transit Facility. I note that this does include a provision for County input on such decision. I suggest that a provision be included to allow the County to have a say in how the commuter parking is to be provided, rather than having the County give the applicant a Capital Facilities Credit for a Commuter Parking Lot that the applicant can opt to close at their sole discretion.
51. In further regard to proffer II.D.3., in option ii), in the third line in subparagraph (b), the word "Owner's" should be "Owners'".
52. In further regard to proffer II.D.3., in option ii), in the fourth line of subparagraph (b), the applicant has again included a provision that mandates a County action, this time to vacate a public access easement on the Commuter Parking Lot that they can choose at their sole option to close. I again point out that the proffers are intended to be the voluntary commitments of the applicant and not the County. I suggest that consideration be given to having the applicant reimburse the County for such vacated easement in an amount equivalent to the value of the Capital Facilities Credit, as adjusted to account for inflation.
53. In further regard to proffer II.D.3., in the sixth line thereof, the applicant has again referenced a "Transit Center" while the term "Mass Transit Facility" has been used throughout the proffer. I suggest that the applicant's intent be clarified.
54. In further regard to proffer II.D.3., in the sixth line thereof, the applicant has indicated that the Transit Center "shall continue to be owned by DTC Partners, LLC its successors or assigns, or the POA, and maintenance of such facility(ies) shall be performed by such Owner or the POA". I suggest that rather than referring to "DTC Partners, LLC" that the term "Owners" be used. I also note that if the facility is owned by the POA, it would necessarily constitute a successor or assign and therefore the reference to the POA is redundant.



Additionally, in the last line of the proffer, I suggest that the term "such Owner or the POA" be changed to "the Owners".

55. In regard to proffer II.D.4., in the third line thereof, I suggest that the phrase "in order" be inserted prior to the phrase "incorporate such facilities". I also suggest that the applicant clarify that if they are to construct structured parking, then such parking structure will be built in the same location as the closed parking area. To this end, I suggest, in the fifth line of the proffer, that the phrase "parking structure on or off" be changed to "parking structure. The temporary parking spaces may be located on or off".
56. In further regard to proffer II.D.4., in the sixth line thereof, the applicant has indicated that the relocated parking spaces will be located "within Dulles Town Center". However, nowhere is "Dulles Town Center" defined. I suggest that the area in which the spaces can be relocated be better defined, and that it be reasonably close to the displaced spaces.
57. In regard to proffer II.E., concerning the number of bike racks, I suggest that a minimum number of bikes that can be accommodated by each rack also be specified.
58. In further regard to proffer II.E., in the sixth line thereof, the applicant has referenced the "Transit Center". I suggest that if this is the same as the "Mass Transit Facility" that this term be used instead.
59. In further regard to proffer II.E., in the sixth line thereof, the applicant has indicated that bike rack facilities shall be included at the Rt. 28 Commuter Lot. However, it is not clear what is to happen to such racks if the Rt. 28 Commuter Parking Lot is closed and moved to the Mass Transit Facility. I suggest that this be clarified.
60. In regard to proffer II.G., in the first two lines thereof, I suggest that the phrase "within 120 days of approval of this application (ZMAP 2007-0001)" be deleted, as it is not completely in accord with the "timing requirements of paragraph I.E.1.b. above" as referenced in the first line, and that reference alone should be sufficient.
61. In further regard to proffer II.G., in the second line thereof, the term "Owner" needs to be changed to "Owners".
62. In further regard to proffer II.G., in the fourth line thereof, I note that the applicant has referenced "Exhibit D attached hereto". However, no Exhibit D was attached. I suggest that this inconsistency be eliminated, and that Exhibit D be provided.

63. In further regard to proffer II.G., in the sixth line thereof, the applicant references "the availability of necessary off-site construction and public access easements", but makes no mention of who is to be responsible for the acquisition of such easements. I suggest that the applicant include a commitment to use good faith efforts to obtain such easements, but that if they are unsuccessful, then they shall request the County to use its power of eminent domain to acquire such easements, with the applicant committing to pay the costs of such eminent domain proceedings, including the price of the easements.
64. In further regard to proffer II.G., in the sixth through ninth lines thereof, the applicant indicates that the Owners shall construct off-site sidewalk on the east side of City Center Boulevard. I suggest that the applicant indicate the intent to be responsible for the acquisition of any right of way necessary for the construction of such off-site sidewalk, subject to the same provisions as for the acquisition of the easements, as referenced above.
65. In regard to proffer II.H., in the first line thereof, I suggest that the word "any" be changed to "each".
66. In further regard to proffer II.H., I note that the applicant has indicated that a request by the County for a warrant analysis can only occur after "any parcel within the property and immediately adjacent to such intersection is developed". The word "property" needs to be capitalized, and I suggest that it be clarified what is intended by the word "developed". It is not clear if this is intended to mean a grading permit has been issued, a parcel has been subdivided, a site plan has been approved, a zoning permit has been issued, or a building has been occupied. Any of these could be construed as "developed". I suggest that this be clarified. I also suggest, in the second line of the proffer, that the phrase "at such time as any" be changed to "provided that at the time of such request a".
67. In further regard to proffer II.H., in the fourth line thereof, the word "Owner" needs to be changed to "Owners". Additionally, in the sixth line of the proffer, the word "county" should be changed to "County".
68. In further regard to proffer II.H., in the list of intersections, I note that one, Dulles Center Boulevard and Kent Drive, is the intersection of a private street with a private street (assuming that Dulles Center Boulevard becomes a private road) and I do not know if this presents any specific issues in regard to a warrant study. I urge staff to ensure that this is not an issue.
69. In regard to proffer III., in the fourth through sixth lines thereof, I suggest that the parenthetical "(or such lesser amount per market rate multi-family residential unit if at the time such payment is due any law or County policy then



in existence establishes a lower amount for multi-family residential capital facilities or similar contributions)" be deleted.

70. In further regard to proffer III., I suggest that rather than stating that the Owners shall receive a credit against the Capital Facilities Contribution the per unit figure needs to be calculated with such credits taken into account, so that the correct amount can be collected at the time of zoning permit issuance and certainty can be brought to the proffer.
71. In further regard to proffer III., in the tenth line thereof, I suggest that the phrase "Mass Transit Facility" be changed to "Mass Transit Facility and Additional Commuter Parking" to reflect what is stated in proffer II.D. I also suggest that the reference to proffer IV.A.6.a." be changed to "IV.A.6."
72. In further regard to proffer III., in the eleventh line thereof, I suggest that the word "used" be changed to "for use".
73. In regard to proffer IV.A.1., I note that the applicant has indicated the intent to construct a Civic Plaza fronting on either a Type A Road or Type B Road. However, the CDP shows the Civic Plaza as fronting on a Type A Road. Therefore, I suggest that this reference to "or a Type B Road" be deleted as it is inconsistent with the Concept Plan.
74. In further regard to proffer IV.A.1., I note that the applicant has made the location of the Civic Plaza on a Type A Road contingent on the Town Green being located on Type B Road. However, the Concept Plan shows both the Civic Plaza and the Town Green as fronting on the Type A Road, so I suggest that this provision be changed to match what is shown on the Concept Plan.
75. In further regard to proffer IV.A.1., in the last sentence thereof, the applicant references bonding the construction of the Civic Plaza "with the first site plan". I suggest that this be changed to read "in conjunction with approval of the first site plan".
76. In regard to proffer IV.A.2., concerning the Community Center, I note that the applicant has indicated the intent to construct a minimum 8,000 square foot Community Center in Land Bay TC-3. However, the applicant has indicated that this facility may or may not be available to all residents on the Property, and it may just be limited to the residents of Land Bay TC-3, if the residents of Land Bays TC-1 and TC-2 have "access" to a pool facility and clubhouse. It is not clear whether this would mean the applicant would provide such pool facilities and clubhouses to Land Bays TC-1 and TC-2 or whether "access" merely means permission to use an existing pool somewhere off of the Property. I do not believe that the latter would be acceptable. Yet, there is no commitment

to construct any other community centers in Land Bays TC-1 or TC-2. Nor is there any provision to indicate that the applicant will adjust the minimum size of the facility upwards if this Community Center is to serve the entire populace of the Town Center and not just Land Bay TC-3. I suggest that this be considered and that the applicant's intent in regard to "access" to a pool and clubhouse for the residents of Land Bays TC-1 and TC-2 be clarified.

77. In further regard to proffer IV.A.2., I note that the Design Guidelines differ from this proffer in that it mentions "a community center" for the "amenity needs of the Urban Center's residents", implying that there will be one community center for the whole Town Center. I suggest that the proffers and the Design Guidelines be made consistent.
78. In further regard to proffer IV.A.2., in the next to last line thereof, I suggest that the phrase "on the Property" be inserted following the word "permit".
79. In regard to proffer IV.A.3., I again note that the applicant is stating that the Town Green may be built on a Type B Road while the Concept Plan clearly shows it as being on a Type A Road. I suggest that this proffer be amended to accurately reflect what is shown on the Concept Plan.
80. In further regard to proffer IV.A.3., in the last sentence thereof, I suggest that the phrase "No hardscape portions of the Town Green that are between a building façade and the edge of building sidewalk need to be bonded until the building adjacent to such portion of the Town Green is constructed" be changed to read "The hardscape portions of the Town Green that are between a building façade and the edge of building sidewalk need to be bonded prior to approval of the first site plan for the building adjacent to such portion of the Town Green".
81. In regard to proffer IV.A.5., I note that the applicant has indicated that the Community Center, Civic Plaza, Town Green and Hadley's Park shall be conveyed to (or subject to a use and maintenance easement in favor of) and maintained by "a POA". This leaves me with a question as all other references to the Property Owners Association refer to it as "the POA". I suggest that the applicant clarify their intent in regard to the nature of the homeowners' association/property owners' association structure they intend to have on the Property.
82. In regard to proffer IV.A.6.a., in the second line thereof, I suggest that the phrase "within 120 days of approval of this application (ZMAP 2007-0001)" be deleted in order to avoid any conflicts in timing between what is stated here and what is stated in the referenced paragraph I.E.1.c.



83. In regard to proffer IV.A.6.b., in the second and third lines thereof, the applicant has indicated that they should received a Capital Facilities Credit for the dedication of Vestal's Gap Park II based on the value of land and the facilities constructed thereon. Again, I suggest that this value be determined prior to the approval of this application and that the proposed Capital Facilities Contribution be adjusted accordingly.
84. In further regard to proffer IV.A.6.b., I note that the applicant shall reserve the right to "obtain" desired easements for construction and maintenance of utilities. I suggest that this statement is rather vague and that the intent should be clarified.
85. In further regard to proffer IV.A.6.b., the applicant states that they shall ensure that the Vestal's Gap Park II site is generally free from trash and debris "upon conveyance to the County as of the date of these Proffers". This statement is internally inconsistent as it references two different times, the time of "conveyance" and "the date of these Proffers". I suggest that the intent be clarified.
86. In regard to proffer IV.A.6.c., in the first line thereof, the applicant uses the phrase "interpretative" markers, while in the fourth line these are referred to as "interpretive" markers. I suggest that a consistent term be used.
87. In regard to proffer IV.A.6.d., in the first line thereof, the word "Owner" needs to be changed to "Owners".
88. In further regard to proffer IV.A.6.d., I note that the applicant has proffered to construct 5 interim parking spaces in one of two locations. I suggest that the County should have some input as to where these spaces are located, and therefore recommend that this proffer be so revised.
89. In further regard to proffer IV.A.6.d., I also note that the interim parking spaces are not to be provided until 12 months after the dedication of the park site. I question why there is such a large delay in the provision of the interim spaces, and I suggest that such space should be made available at the time the park is dedicated.
90. In further regard to proffer IV.A.6.d., in the seventh line thereof, the word "Owner" needs to be changed to "Owners".
91. In further regard to proffer IV.A.6.d., I note that if either the interim or permanent parking spaces are provided off-site of the park nothing has been provided nothing in the proffer to indicate that a public access easement for the

parking, or from the parking to the park entrance, will be provided. I suggest that this be addressed.

92. In regard to proffer IV.A.7.a., in the first line thereof, I suggest that the phrase "an occupancy" be changed to "a zoning".
93. In further regard to proffer IV.A.7.a., in the second line thereof, I suggest that the phrase ", for review and approval," be inserted following the reference to the Department of Building and Development".
94. In further regard to proffer IV.A.7.a., I note that the applicant intends to submit a Re-Vegetation plan for Sections C, D, E, and F as depicted on the Stream Valley Plan. I suggest that the applicant identify the Stream Valley Plan as Sheet 18 of the Concept Plan. Also, I note that Sections C, D & E are all off-site from this application. I suggest that the applicant address how they intend to ensure that the off-site sections are planted in accord with the Re-Vegetation Plan.
95. In regard to proffer IV.A.7.b., in the second line thereof, I suggest that the word "approved" be inserted prior to the phrase "Re-Vegetation Plan".
96. In further regard to proffer IV.A.7.b., in the second line thereof, I note that the applicant mentions the removal of construction debris "from the location noted on Sheet 18". I do not see any such location noted on Sheet 18. I suggest that this inconsistency be eliminated.
97. In further regard to proffer IV.A.7.b., in the fourth line thereof, I suggest that the phrase "approved as being" be inserted prior to the word "consistent".
98. In regard to proffer IV.A.7.c., I note that the applicant uses the phrase "hardscape crossings of the Stream Valley". I suggest that the applicant clarify what they are referencing by this phrase. I also note that they have indicated that they "reserve the right to construct" but they do not commit to construct such features. I suggest that this reservation of right be stated as an affirmative responsibility.
99. In regard to proffer IV.A.8., in the third line thereof, I suggest that the word "combined" be inserted prior to the phrase "Land Bays TC-1 and TC-2".
100. In further regard to proffer IV.A.8., in the second paragraph thereof, the applicant references "a location between" the Pedestrian Cap and Dulles Center Boulevard. I suggest that the applicant refine this to be the location shown on Sheet 18.



101. In further regard to proffer IV.A.8., I note that one of the timing triggers for the submission of a site plan for the Pedestrian Bridge is tied to "the site plan for any building adjacent to the terminus of the bridge in Land Bay TC-2". I note that Sheet 18 does not show a building adjacent to the terminus of the bridge in Land Bay TC-2. I suggest that it be clarified as to what the applicant intended by use of the word "adjacent". I also suggest that the word "any" be changed to "the first" and that timing for the actual construction of the bridge, and not just the timing of the site plan submission, be identified.
102. In further regard to proffer IV.A.8., in the sixth line thereof, I suggest that the word "occupancy" be changed to "zoning". Additionally, in the seventh line, I suggest that the phrase "development on the Property" be inserted following the phrase "non-residential".
103. In regard to proffer IV.A.9., I note that the applicant has proffered to provide the County with a lease of 800 square feet of enclosed space for the establishment of a public safety facility. I question the adequacy of the size of the space and urge staff to determine if such a small space can be used for a public safety facility.
104. In further regard to proffer IV.A.9., in the seventh line thereof, the word "Owners" needs to be changed to "Owners'".
105. In further regard to proffer IV.A.9., in the last two lines thereof, I suggest that the phrase "within sixty days of such notification" be changed to at least provide "within such 90 day period".
106. In regard to proffer V., in the third and fourth lines thereof, I suggest that the phrase "and shall be used" be changed to "for use".
107. In regard to both proffers VI.A. and VI. B., in the third line of each, I suggest that a comma be placed after the first use of the word "County". I also suggest, in the ninth line of each proffer, that the phrase "and/or" be changed to "and".
108. In regard to proffer VII., concerning the Owner's Association, the applicant references the "Dulles Town Center Owner's Association" as the umbrella association for the Dulles Town Center Project. It is, however, not clear how this relates to the requirements of the existing proffers to have a Homeowners' Association and a Property Owners' Association. I suggest that this be clarified. It is also unclear how this existing corporation, whose membership consists of off-site landowners, is going to be made to be responsible for the ownership and maintenance requirements for portions of the Property, as set forth in these proffers, when it is already existing and these new requirements were not contemplated by this corporate entity's incorporation documents and

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this corporate entity is not a party to this application. I further suggest that this be clarified. It may be advisable to include a requirement that the POA must submit revised documents, prior to the approval of the first site plan or record plat on the Property, whichever is first in time, indicating that it can and will assume the responsibilities described in these proffers.

109. In further regard to proffer VII., at a minimum, I suggest that it be clarified that all of the Property shall be subject to the POA and that all landowners within the Property shall be members of the POA.
110. In further regard to proffer VII., and inasmuch as the applicant intends to place significant costs and responsibilities for maintenance of facilities on the POA, I question why there is nothing in the proffers to provide for some capitalization of the POA so that it could assume such responsibilities.
111. In further regard to proffer VII., I note that the applicant states that they shall be free to create additional owners' associations or sub associations. Theoretically then the applicant could place the responsibility for maintenance of a major facility, such as Dulles Center Boulevard, onto a sub-association, and I do not believe that this would be advisable.
112. In further regard to proffer VII., I suggest that the applicant indicate that the documents for the POA showing that the POA shall assume responsibility, which will need to be endorsed by the POA corporate body, will be submitted for review and approval by the County prior to approval of the first site plan or record subdivision on the Property, whichever is first in time.
113. In regard to proffer VIII., in the fourth and fifth lines thereof, I suggest that the phrase "into either the existing Owner's associations documents for the POA or the documents of any additional associations formed" be changed to "Into the existing POA's documents and into the documents of any additional associations formed".
114. In further regard to proffer VIII., I suggest that the proffer be amended to specifically include a declaratory statement indicating that development on the Property shall conform to the Design Guidelines.
115. In regard to proffer IX.A.1., I note that the applicant is committing to establishing Tree Conservation Areas in areas off-site of the Property. I suggest that the applicant clarify how they intend to ensure conformance with this proffer with off-site land owners.
116. In further regard to proffer IX.A.1., in the fourth and fifth lines thereof, I suggest that commas be placed around the phrase "as allowed by the County".



Additionally, in the fifth line of the proffer, I suggest that the phrase "and shall be permitted" be changed to "only".

117. In further regard to proffer IX.A.1., in the seventh line thereof, I suggest that the phrase "pedestrian bridge and trails and" be changed to "pedestrian bridge in the location shown on Sheet 18, and trails as shown on the CDP."
118. In regard to proffer IX.A.2., in the first line thereof, I suggest that the word "all" be inserted at the beginning of the proffer. In addition, I suggest that the phrase "on the Property" be inserted following the phrase "site plan applications".
119. In further regard to proffer IX.A.2., I suggest that it be clarified how this proffer shall apply to the off-site Tree Conservation Areas.
120. In regard to proffer IX.A.3., in the last sentence thereof, the applicant uses the phrase "the Species" but then only discusses the placement of replacement trees. I believe there may be something missing that addresses providing replacement trees that are the same species as the ones being replaced. I suggest that this be clarified.
121. In regard to proffer IX.A.4., I note that it states that the applicant shall "seek to amend" the POA documents to include a provision that prohibits the removal of trees in Tree Conservation Areas. Elsewhere throughout the proffers, the applicant merely says that the POA shall be responsible for certain matters, and makes no mention of its being able to amend the documents or to even "seek to amend" the documents. So, it is not clear why for this simple provision the applicant must "seek to amend" the documents. I suggest that this be clarified. Additionally, this provision would apply to on-site and off-site trees. I suggest that it be affirmatively stated that for the on-site Tree Conservation Areas this provision shall apply.
122. In further regard to proffer IX.A.4., I suggest that the applicant submit this amendment to the POA documents to the County for review and approval prior to the approval of the first record subdivision or site plan application on the Property, whichever is first in time.
123. In regard to proffer IX.B., I note that the applicant indicates that a Tree Conservation Plan shall be submitted for each site plan or construction plans and profiles for development on parcels containing Tree Conservation Area. I suggest that it be clarified how this applies to off-site areas depicted as Tree Conservation Areas, and how this will be applied to Land Bay OP-1, which is supposed to have Tree Conservation Area, although it is not shown on the Concept Plan.

124. In regard to proffer IX.C., in the first line thereof, I suggest that the phrase "make a good faith effort to" be deleted. I also suggest that the applicant commit to mitigating their wetlands impacts within Loudoun County.
125. In regard to proffer IX.D., wherein the applicant claims that an improvement in Water Quality Volume shall be credited as a BMP, I urge staff to review the acceptability of such a provision.
126. In regard to proffer IX.E.1., in the first line thereof, I suggest that the word "building" be changed to "zoning". Additionally, in the second line, I suggest that the word "Owner" needs to be changed to "Owners".
127. In regard to proffer IX.E.3., in the fourth line thereof, I suggest that the word "Owner" needs to be changed to "Owners".
128. In further regard to proffer IX.E.3., in the last two lines thereof, the applicant has stated the intent to submit a statement listing all Energy Star qualified components "to be installed in each unit" prior to the issuance of the first residential certificate of occupancy. It seems that this list should be submitted with application for the certificate of occupancy in order to provide something to verify that it has been done.
129. In further regard to proffer IX.E.3., in the first line of the second paragraph thereof, I suggest that the word "Owner" needs to be changed to "Owners". I also question how this provision committing to energy efficient lighting is to be monitored and enforced. I suggest that this be clarified.
130. In regard to proffer X., I note that the applicant is warranting that they own all interests in the Property. However, they do not own any interest in the right of way they want to have abandoned and then incorporated into their development. I do not see how the right of way, if it is abandoned would become subject to these proffers.
131. I note that the Concept Plan and the Design Guidelines indicate the presence of an outdoor public market, but there is nothing in the proffers to address this. I suggest that the intent be clarified.
132. These proffers will need to be signed by all landowners, and be notarized, prior to the public hearing on this application before the Board of Supervisors.



# **DULLES TOWN CENTER**

**ZMAP 2007-0001 / SPEX 2008-0047 / SPEX 2008-0048**

## ***- Response to Zoning Division Referral Comments -***

**July 1, 2010**

### **ZONING DIVISION**

*(Comments Dated April 8, 2010)*

1. **In regard to the preamble, I note that the applicant has made the proffers contingent on receipt of approval of the Zoning Map Amendment application and both of the above referenced Special Exception applications. Staff should ensure that the Board of Supervisors is aware of this provision in the event that either of the Special Exception applications is recommended for denial while the Zoning Map Amendment is recommended for approval.**

**RESPONSE:** [this comment is directed to the Project Manager]

2. **In further regard to the preamble, I note that this rezoning removes a portion of Dulles Town Center from the existing Dulles Town Center Proffers, resulting in differing proffers for different portions of Dulles Town Center. I suggest that a proffer audit be conducted to ensure that no existing proffers within Dulles Town Center, especially the phased transportation proffers, fail due to the removal of this portion of Dulles Town Center from the existing proffers, or whether any existing proffers are past due, such as the access to Loudoun Tech Center.**

**RESPONSE:** A proffer audit is being completed by the Applicant and will be submitted shortly. While much of the development approved with ZMAP 1990-0014 has not been constructed, significant transportation infrastructure --- all required internal roadways -- has been completed and accepted into the VDOT system. There are few, if any, projects in Loudoun County in which all on site transportation infrastructure has been completed well ahead of planned and approved development.

**DULLES TOWN CENTER**  
**ZMAP 2007-0001 / SPEX 2008-0047 / SPEX 2008-0048**  
**- Response to Zoning Division Referral Comments -**

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The proffered connection to Ridgetop Circle in Loudoun Tech Center has been partially fulfilled. In fact, the Applicant constructed a wider road section than required for the portion of the connection that has been built. Implementation of a proffered park and ride is in dispute. We are not aware of other unfulfilled proffers, and, in fact, the County issued a zoning confirmation in 2007 indicating no concerns.

3. **In regard to proffer I.A., I note that while a number of sheets are proffered, Sheet 14 is not proffered, and this is the sheet which shows the number of levels planned for each building. I suggest that the number of levels of the buildings be included in the proffered materials.**

RESPONSE: Building heights are clearly capped (see Zoning Tabulations on Sheets 11 and 12), and minimum heights for office buildings are proffered. It is not clear why the number of levels of planned buildings should be proffered as an important element of the proposed entitlements is to allow for flexibility of design within a development framework comprised of proffers, CDP and design guidelines. Discussion of this point is requested.

4. **In further regard to proffer I.A., I note that Sheet 16 is the Special Exception Plat for Automotive Service Station use and Sheet 17 is the Special Exception Plat for the Hotel/Motel use. I further note that these proffers are contingent on approval of these special exception uses, but the status of these two sheets is unclear. I suggest that staff include conformance with these two sheets as a condition of approval of the special exceptions.**

RESPONSE: Draft conditions of approval have not yet been developed by staff, but the Applicant would agree to a condition of substantial conformance to the SPEX sheets.

5. **In regard to proffer I.B., I note that the applicant has indicated the intent to provide 1,230 residential units on the Property, inclusive of any required ADU's. I suggest that the term "Affordable Dwelling Units" be used prior to the use of this acronym. However, I also note that Sheet 14 of the Concept Plan shows all of the residential structures as being four stories or higher. Section 7-102(D)(1) exempts from the ADU requirements "any multiple family dwelling unit structure with four (4) stories or more and having an elevator". Given this language, there may be no ADUs provided by this project if they include elevators in all of their buildings. I urge staff to consider the appropriateness of this and I suggest that the applicant consider proffering to some minimum number of ADUs.**



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RESPONSE: The reference to ADUs has been revised as requested. It is unclear why commitment to the standards set in the zoning ordinance is possibly inappropriate. Staff has noted on numerous occasions that they are concerned that high rise construction obviates the requirement for ADUs, but the economics of high rise construction in Loudoun County does not support the provisions of ADUs.

6. **In further regard to proffer I.B., in the third line of the second paragraph thereof, I suggest that the phrase “date hereof” be changed to “date of approval of this application”. Additionally, in the last two lines of the paragraph, I suggest that the phrase “provided such materials are commonly accepted by the disposal company servicing the property in question” be changed to read “for such materials as are commonly accepted by the disposal company hired by the Owners to service the multi-family units. The Owners shall ensure that such company engages in recycling as well as waste disposal”.**

RESPONSE: Revised as requested.

7. **In regard to proffer I.C., in the first line thereof, I suggest that the phrase “, within the respective zoning districts,” be inserted following the phrase “may include”.**

RESPONSE: Revised as requested.

8. **In further regard to proffer I.C., in the last sentence thereof, I note that the applicant has stated that the Community Center in the TC-3 Land Bay and the Mass Transit Station shall not count against approved non-residential square footage. I do not see how the Mass Transit Station is anything but a non-residential use. Sheet 11 currently shows maximum non-residential square footage for the various land bays. I suggest, if these facilities are not to be counted against the non-residential square footage, that a separate column be added to the table on Sheet 11 to account for them under separate categories. Additionally, Section 4-808(F) requires that between 25% and 50% of the total land area of the district be provided as residential. It is currently not clear how this requirement is being met, and it becomes less clear if uses that are not residential do not count as non-residential. I suggest that this be clarified.**

RESPONSE: As discussed at our April 27 meeting, we will add a separate column to the table on Sheet 11.

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With regard to residential use in the PD-TC district, a modification is included to reduce the proportion of residential land use provided.

9. In further regard to proffer I.C., I note that Sheet 11 of the CDP includes a statement that "following abandonment of Dulles Center Boulevard right of way, the land area shall be added to Land Bay OP-1 at a .6 floor area ratio". This is problematic for a couple of reasons. First the project cannot be approved for density exceeding that which was advertised. Since there is no specific amount of additional floor area clearly identified I presume that the additional square footage was not advertised. Secondly, this proffer gives specific limits to permitted square footage of non-residential uses in the PD-OP Zoning District. As written, this note would violate the specific language of the proffer. Additionally, this land area is currently owned by Loudoun County, and is not included in the application. While the right of way could be conveyed by the County to the applicant, the land would not be subject to these proffers. I suggest that this note be deleted.

RESPONSE: As discussed at our April 27 meeting, Note 2 on Sheet 11 will be revised to state *"Any portions of Dulles Center Boulevard that are vacated or abandoned shall have the zoning designation applicable to such property at the time such property was dedicated as a public right-of-way."*

10. In further regard to the tables on Sheet 11, I note that the applicant has included a table that shows transfers of density between Land Bays TC-1 and TC-2. While this is acceptable as far as it goes, I suggest that there needs to be a commitment that ensures that the Core will end up with more density than the Fringe. This is not clearly provided. The Town Center District is designed to have the densest development in the Core and this table, as written, does not ensure that this will happen. I suggest that this be rectified.

RESPONSE: The ability to transfer approved square footage between land bays TC-1 and TC-2 is designed to maximize the ability of the applicant to be responsive to the market, particularly for office users. Again, requirements as to form, articulated in the proffers, CDP and design guidelines are intended to provide the framework that will result in the desire of Town Center design. We note that heights permitted in the fringe, primarily land bay TC-1, are lower than the heights permitted in land bay TC-2, dominated by the town center core. This approach ensures that the greatest building heights should be achieved in the core. Additionally, Proffer I.D. has been revised to commit to a minimum .5 FAR.



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11. In regard to proffer I.D.2.b., concerning a restaurant in the proposed hotel, I note that the proffers state that there will be a restaurant that will "be a minimum of 1,000 sf unless there shall exist elsewhere in Land Bays TC-1 and TC-2 a restaurant of at least 4,000 sf." It is not clear if the applicant's intent is to mean that if there is a 4,000 square foot restaurant elsewhere in Land Bays TC-1 or TC-2 then there will be no restaurant in the hotel or that the 1,000 square foot minimum size for the restaurant will not apply. I suggest that the intent be clarified.

RESPONSE: The proffers have been revised to be clear that a restaurant is not required if there is a restaurant at least 4,000 sf in size within Land Bay TC-1 or 2. The proffer still requires dividable meeting space, a ballroom, exercise room, pool, and guest store and so ensures a full service hotel.

12. In regard to proffer I.D.3., I note that the applicant has indicated that they may construct 775,000 square feet of permitted PD-OP uses in Land Bay OP-1, but that they must include 1.5 acres of Land Bay OP-1 in the Tree Conservation Area for the Property in order to exceed this amount of development. An additional 1.5 acres of Land Bay OP-1 must be included within Tree Conservation Area in order for development in Land Bay OP-1 to exceed 875,000 square feet. However, the CDP does not show any Tree Conservation Area for Land Bay OP-1. Proffer IX.B. only requires that a Tree Conservation Plan be submitted for parcels showing Tree Conservation Areas on them. I suggest that the applicant's proposed three acres of Tree Conservation Area for Land Bay OP-1 be shown on the CDP.

RESPONSE: On Land Bay OP-1, tree conservation areas need to be established in concert with proposed development to maximize the value of tree conservation on this land bay. Proffer IX.B has been revised to clarify that a Tree Conservation Plan will be provided, if needed, for Land Bay OP-1.

13. In regard to proffer I.D.4., I note that the applicant refers to "all office buildings" and states that they shall all be constructed to a minimum of four stories. I question whether this reference is intended to refer to buildings that are office/retail mixed use buildings as well. I suggest that this be clarified.

RESPONSE: This proffer has been revised to state that "*all office buildings, including office buildings with ground floor retail, ...*" will be at least 4 stories in height.

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14. In regard to proffer I.D.5., in the second line thereof, I suggest that the phrase "the extent practicable to" be deleted, so that the structured parking will be consistent with the Design Guidelines, which already say that they shall be followed to "the extent reasonably practical". In addition, in the fifth line of the proffer, I suggest that the phrase "Route 28 Corridor and consistent" be changed to "Route 28 Corridor, and shall be consistent".

RESPONSE: Revised as requested.

15. In regard to proffer I.D.6., I note that the applicant has indicated that the right-of-way for Dulles Center Boulevard, between the Route 28 right-of-way and the Atlantic Boulevard right-of-way, "shall be abandoned and, upon application, re-conveyed to DTC Partners, LLC or its designee", that such land area "shall be added to OP-1 Land Bay", and that "the permitted square footage of development within OP-1 shall be increased by the area of such abandoned right of way multiplied by .60". Proffers are zoning regulations that apply to specific properties that are voluntarily agreed to by the landowner. As such, they are unilateral commitments and are not designed to reflect commitments on the part of the County. At best, the applicant can commit to submitting the request for the abandonment. I suggest that who is to be responsible for the cost of proceedings to abandon the right of way also be addressed. Further, as this right-of-way is currently owned by the County, and not the applicant, it is not subject to this application and proffers. If this land area is to be integrated into this development and allowed to develop at a .60 FAR, I believe that it needs to be subject to these proffers. I also note that Section 33.1-165 of the Code of Virginia allows for right-of-way to be abandoned, and that the County is then free to sell the land for consideration or for the exchange of other land. Section 15.2-2272 of the Code of Virginia allows for the vacation of right-of-way, in which case the land goes 50-50 to the abutting landowners. If this latter method is pursued, then the agreement of the 1 Dulles Town Center LLC would be needed to allow for the land to go 100 percent to Land Bay OP-1. Either way, this proffer does not appear to contemplate all of the intricacies of what is being proposed.

RESPONSE: Proffer I.D.6. has been deleted. As noted in the response to Comment 9, any vacated or abandoned right-of-way shall revert to its pre-dedication zoning designation.



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16. In regard to proffer I.E.2., in the first two lines thereof, I suggest that the phrase "Prior to an Owner being able to obtain a zoning permit for the 1,000,000<sup>th</sup> square foot of non-residential use within" be changed to "Prior to the issuance of the zoning permit for the 1,000,000<sup>th</sup> square foot of non-residential uses within". I also note that based on a previous proffer, the square footage of the Community Center and the Mass Transit Facility will not count towards meeting this 1,000,000 square foot requirement.

RESPONSE: Revised as requested.

17. In regard to proffer I.E.2.a., in the third line thereof, I suggest that the phrase "limitations set for in this section following the issuance" be changed to "limitations set forth in this section. Following the issuance".

RESPONSE: Proffer I.E.2.a has been revised to state that prior to issuance of the 651<sup>st</sup> residential unit, 750,000 sq of non-residential uses, 250,000 sf of which shall be within the PD-TC district, shall have been constructed on the Property. This reflects an effort to accommodate Community Planning concern that balance between residential and non-residential uses be accomplished not just on the overall subject property but also within the PD-TC land bay per se.

18. In further regard to proffer I.E.2.a., in the last two lines thereof, I suggest that the phrase "residential units in excess of 650 may be developed" be changed to "the Owners shall be permitted to obtain zoning permits for all residential zoning permits on the Property".

RESPONSE: N/A. See response to Comment 17.

19. In regard to proffer I.E.3., I find the applicant's intent to be unclear. It appears that the intent is that, notwithstanding the preceding proffer which limited residential development to 650 units unless the Property has been developed with more than 1,000,000 square feet of non-residential development, the applicant is to be allowed to develop all 780 dwelling units in Land Bays TC-1 and TC-2 if such units are in the Core and the buildings in which the units are located have at least 60% of the ground floor frontage designed for non-residential uses. However, it is not clear if these units are intended to count against the 650 unit cap prior to the issuance of the 1,000,000<sup>th</sup> square foot. If they do not, then this proffer essentially negates the previous proffer and its linkage.

RESPONSE: The goal of this proffer is to permit residential development above the 650 unit cap for phase 1 within the Core, as long as those units are within mixed use buildings. Staff recommended this approach as an incentive

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to develop mixed use buildings within the Core. In combination with revised proffer I.E.2.a, the proposed balance of residential and non-residential uses is as follows:

- Up to 650 units (450 max in Land Bay TC-3) may be developed in Phase I
- Additional units may be developed at such time as:
  - 750,000 sf of non-residential, 250,000 of which is in the PD-TC district, has been developed on the Property OR
  - 500,000 sf of non-residential has been developed in the PD-TC district (at this trigger, only units within mixed use buildings may proceed).

- 20. In regard to proffer I.E.4., in the first line thereof, I suggest that the phrase “Prior to Owner being” be changed to “Prior to the Owners being”.**

RESPONSE: Revised as requested. Note this proffer has been renumbered as 5. Proffer I.E.4 now commits to implementation of the Commuter Parking Lot expansion prior to 1,000,000 sf of commercial being constructed (previously part of revised I.E.2.a.).

- 21. In regard to proffer II.A.2., in the first line thereof, I note that it states that the Owners shall “be permitted to convert” Dulles Center Boulevard from its intersection with City Center Boulevard to its intersection with Atlantic Boulevard to a privately owned and maintained roadway. Inasmuch as the Owners do not own City Center Boulevard, as it is owned by the County, I believe that this proffer faces the same issues as the abandonment of the portion of Dulles Center Boulevard adjacent to Land Bay OP-1 faces, and it is not up to the applicants to “convert” the road to a private roadway. The applicant may request the County to abandon or vacate the right of way. However, if is abandoned then the County continues to own it until it is sold or exchanged for consideration. If it is vacated, then it goes 50-50 to the adjoining property owners, and a portion of such right of way fronts property that is off-site to this application.**

RESPONSE: The proffer has been revised to reflect the necessity of the Board vacating or abandoning the right-of-way as a condition of the full implementation of the proffer.

- 22. In further regard to proffer II.A.2., in the third and fourth lines thereof, I note that the applicant states that they “shall be permitted to implement those traffic calming and other measures set forth in the Design Guidelines”. However, there is nothing in the Design Guidelines identified as “traffic calming measures”. Therefore, I suggest that the phrase “shall**



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be permitted to implement those traffic calming and other measures set forth in “ be changed to read “shall implement the”.

RESPONSE: Revised as requested.

23. In further regard to proffer II.A.2., in the fifth line thereof, the applicant uses the phrase “if VDOT will not permit the conversion”. However, the determination to abandon a roadway appears to be a County determination, not a VDOT determination. I suggest that this provision be changed to reflect this.

RESPONSE: Revised as requested.

24. In further regard to proffer II.A.2., in the seventh through ninth lines thereof, I note that the applicant has included a sentence that ostensibly removes an existing proffer from property that is not subject to this application. This cannot be done and I suggest that this sentence be deleted.

RESPONSE: This proffer does not remove a proffer from property that is not a part of the zoning application, it simply states that the County shall not enforce the proffer. This is appropriate to avoid two contradictory proffers.

25. In further regard to proffer II.A.2., in the eleventh line thereof, the applicant has included a provision by which they are indicating that the County must re-convey the right of way to DTC Partners, L.L.C. if VDOT agrees to the conversion of the roadway to a private road. Again, I do not see this as a VDOT call, nor are the proffers to reflect the commitments of the County. I suggest that the applicant indicate the intent to request that the County abandon the right-of-way and otherwise indicate what it is that they are committing to do, rather than what the County is supposedly committing to do.

RESPONSE: Revised as requested.

26. In further regard to proffer II.A.2., I note that the applicant has indicated that any portion of Dulles Center Boulevard converted to a private roadway shall be maintained by the “Property Owners’ Association (as defined in Proffer \_\_\_\_\_ below)”. I also note that the applicant has specified who is supposed to own the right of way, but is assigning the responsibility for maintenance of the right of way to a third party that is not subject to these proffers or this application. This is not appropriate. Furthermore, the applicant, I believe, intended to refer to Proffer VII,

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**Owner's Association, as the place where the "Property Owners' Association" is defined. However, that proffer mentions the "Dulles Town Center Owner's Association" as the POA, while in the existing proffers, there are requirements for a Homeowners' Association and a Property Owners' Association mentioned, and it is not clear which entity is now being referenced. I suggest that this be clarified. Inasmuch as the entity is not party to these proffers and does not own any of the Property, I suggest that maintenance of the right-of-way needs to be the responsibility of the Owners.**

RESPONSE: The proffer has been revised to reflect that the Owners will maintain the private road unless the POA agrees in writing to assume such obligation.

- 27. In further regard to proffer II.A.2., I note that while the applicant has used the term "Property Owners' Association" they have not identified this phrase with its acronym "POA", yet uses this term in a number of places following this proffer. I suggest that if the applicant is going to use "POA" as a term of art, that they identify it as such herein.**

RESPONSE: Revised as requested.

- 28. In regard to proffer II.B., concerning the Pedestrian Network, I note that the network shown on Sheet 15 shall be provided either within the existing right-of-way or outside of the right-of-way. I suggest that if a portion of the network is located outside of the right-of-way, then such portion should be located within a public access easement dedicated to the County.**

RESPONSE: Provision of bicycle and pedestrian facilities which are located outside of the ROW within a public access easement is a requirement of the FSM.

- 29. In further regard to proffer II.B., in the last sentence thereof, I note that the applicant contemplates "assigning" the responsibility to maintain the pedestrian network to the POA. However, since the Owner's Association is a separate entity that already exists, it seems to me that the POA will have to be willing to assume this responsibility, and I suggest that the word "assigned" be changed to "assumed".**

RESPONSE: Revised as requested.



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30. In further regard to proffer II.B., I note that a portion of the pedestrian network is off-site from the Property. I suggest that the applicant indicate that they shall be responsible for acquiring any off-site right-of-way or public access easement necessary for the construction of such portion of the pedestrian network.

RESPONSE: The proffer has been revised to provide the Owners will be responsible for acquiring all necessary right-of-way or easements for property within the larger Dulles Town Center project, but not off-site of such project.

31. In further regard to proffer II.B., I note that the existing proffers require that lighting be provided on trails, but that no such provision is included herein. Since some of the network is off-site and already constructed, I presume that those lights have been installed. As written, these proffers mean that a portion of the pedestrian network will be lit, while other portions will not be lit. I suggest that the appropriateness of this be reconsidered. I suggest that lighting for all of the trails be provided.

RESPONSE: The proffers have been revised to ensure that all sidewalks and trails, other than nature trails (depicted as 8'-permeable trails), will be well-lit. Where street lighting is adequate, additional trail lighting will not be required, however.

32. In regard to proffer II.C.1., in the first line thereof, the applicant references "paragraph I.E.7.a. above". However, there is no such proffer. I believe the intent was to reference "paragraph I.E.1.a". If so, I suggest that this change be made. If not, then I suggest that the applicant's intent be clarified.

RESPONSE: Proffer is revised to correct this reference.

33. In further regard to proffer II.C.1., in the second and third lines thereof, I suggest that the phrase "within 120 days of approval of this application (ZMAP 2007-0001)" be deleted, as this is not in full conformance with the language of proffer I.E.1.a., which includes certain contingencies to the 120 day commitment. By deleting this phrase, the inconsistencies between this proffer and proffer I.E.1.a. would be eliminated.

RESPONSE: Revised as requested.

34. In further regard to proffer II.C.1., in the fourth and fifth lines thereof, I suggest that the parentheses around the phrase "with a minimum of 100 parking spaces" be changed to commas.

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RESPONSE: Revised as requested.

35. In further regard to proffer II.C.1, I note that the applicant has indicated the intent to place a commuter parking lot in Land Bay OP-1 in the location shown on Sheet 7 of the CDP. However, this statement is not accurate as Sheet 7 shows the commuter lot as being located in the existing right-of-way for Dulles Center Boulevard, not Land Bay OP-1. The applicant has also indicated the intent to grant the County a public access easement over the commuter parking lot, which is to be built on land that is currently owned by the County, but which the applicant has requested that the County convey to them. I suggest that if the right-of way is abandoned as a roadway, it should remain the County's land, and that the applicant should consider proffering to construct the commuter parking lot on County owned land. Additionally, I note that the current proffers already require that a commuter lot be constructed, and that the trigger for its construction has happened. I question where the already required parking lot is to be constructed.

RESPONSE: The commuter parking lot will be located partly on the no longer used portion of Dulles Center Boulevard and partly on land owned by DTC Partners, LLC. Since the commuter parking lot will be maintained by the Owners or POA and may one day be relocated to the transit facility, it is appropriate for the Owners to own such facility. The proffer will be revised to reflect the above.

36. In further regard to proffer II.C.1., in the last line thereof, I suggest that the phrase "of the above mentioned site plan application" be added to the end of the proffer.

RESPONSE: Revised as requested.

37. In regard to proffer II.C.2., in the first through third lines thereof, I suggest that the phrase "prior to the issuance of the zoning permit for the 1,000,000<sup>th</sup> square foot of non-residential development within the PD-TC and/or PD-OP zoned portions of the property" be deleted in order to ensure that there is no conflict between the provisions of this proffer and the timing mechanism previously mentioned in proffer I.E.2.b. If it is not deleted, at a minimum, the word "property", found in the third line of the proffer, needs to be changed to "Property".

RESPONSE: Revised as requested.



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38. In further regard to proffer II.C.2., in the fourth line thereof, I suggest that the phrase "to the County and diligently pursue approval for" be changed to "to the County, and diligently pursue its approval, for".

RESPONSE: Revised as requested.

39. In further regard to proffer II.C.2., in the sixth through tenth lines thereof, I note that the applicant is seeking a Capital Facilities Credit for the appraised value of land and facilities associated with an additional 100 parking spaces and for the maintenance of the 100 parking spaces based on a twenty year budget agreed upon by the County and the POA. I do not see the logic in this. The applicant is asking the County to convey the land to them, and then to get a Capital Facilities Credit for granting an access easement over the land the County just returned to them. Further the applicant wants a credit based on expenses that are to be incurred by the third party POA. I suggest that this should not be accepted. Furthermore, even if this were to be accepted, I fail to understand why this is being stated in this proffer, rather than figuring the Capital Facilities Credit and adjusting the Capital Facilities Contribution accordingly. This calculation should not be left until the time of the contribution. It should be known before the proffers are accepted.

RESPONSE: This assessment is not correct. Proffer II.C.1 commits to development of a 100-space Commuter Parking Lot in the location of the closed Route 28 access road on land currently in the public right-of-way (i.e. County-owned). The Applicant does not seek capital facilities credit for the first 100-spaces in recognition of the fact that this commitment is the subject of prior proffers.

Proffer II.C.2 commits to a 100- space expansion on land owned by the Applicant; capital facilities credit is sought only for the *expansion*.

With regard to maintenance, the Applicant is seeking to provide maintenance of an important public facility on behalf of the County, as long as the facility is needed and seeking a credit only for 20-years of the maintenance cost. The capital facilities contribution proffer has been revised to reflect a new approach to capital facilities.

We agree that the amount of the Capital Facilities Credit should be determined now.

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40. In further regard to proffer II.C., generally, I note that there is nothing in this section to indicate that the commuter parking lot will conform to the Design Guidelines. I suggest that this be considered.

RESPONSE: Revised as requested.

41. In regard to proffer II.D.1., in the second line thereof, I suggest that the reference to "paragraph I(E)(4)" be changed to "paragraph I.E.4."

RESPONSE: Revised as requested.

42. In further regard to proffer II.D.1., in the second line thereof, I suggest that the phrase "the zoning permit for the" be inserted prior to the phrase "2,000,000<sup>th</sup> square foot".

RESPONSE: Revised as requested.

43. In further regard to proffer II.D.1., in the third line thereof, I suggest that the phrase "any required application" be changed to "all required applications, including the requisite Special Exception application,".

RESPONSE: Revised as requested.

44. In further regard to proffer II.D.1., I note that there is no description of what the Mass Transit Facility is to contain. The only description of the Facility is contained in the Design Guidelines, yet there is nothing in the proffers to indicate the intent to construct the Facility in accord with the Design Guidelines. I suggest that this be included.

RESPONSE: Revised as requested.

45. In further regard to proffer II.D.1., I note that the applicant has indicated that they shall receive a credit against their Capital Facilities Contribution for the value of the land and 20 years worth of maintenance on the facility by the POA. Yet, the applicant intends to only provide a public access easement over the land and not dedicate the land, and the applicant is not going to be the entity maintaining the facility. I do not see why a credit should be given for land the County does not own or for maintenance the applicant is not performing. Further, if such credit is to be given, it should be calculated at this time and figured into the proposed Capital Facilities Contribution rather than leaving it to be determined by the permits counter at the time of application for zoning permits.



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**RESPONSE:** The County will have a legal property interest in the facility which justifies the Capital Facilities Credit. The proffer will be revised to reflect maintenance by the Owners.

We agree that the amount of the Capital Facilities Credit should be determined now.

- 46. In further regard to proffer II.D.1., and its relation to proffer II.D.3., I note that the applicant is contemplating closing the Rt. 28 Commuter Parking Lot and moving it to the Mass Transit Facility. In such case, the applicant anticipates receiving a Capital Facilities Credit for such parking lot. However, the applicant has also indicated that they anticipate a credit for the Rt. 28 Commuter Parking Lot. In essence, the applicant is requesting to receive two Capital Facilities Credits for one Commuter Parking Lot. I find this to be inappropriate. Again, I suggest that the value of the lot, wherever it resides, be determined now, and that its value be calculated into the proposed Capital Facilities Contribution.**

**RESPONSE:** The proffer will be revised to make clear that there is no Capital Facilities Credit for the land or construction associated with relocated parking spaces for which the Owners already received a Capital Facilities Credit, but only with additional parking spaces.

- 47. In regard to proffer II.D.2., in the first line thereof, the applicant refers to a "Mass Transit Center". It is not clear if this is intended to be the same as, or different from, the "Mass Transit Facility". If it is the same, then I suggest that the same terminology be used. If it is intended to be different, I suggest that the difference be clarified.**

**RESPONSE:** Revised as requested.

- 48. In regard to proffer II.D.2.b., I note that the applicant has referenced a "Transit Center". Again, it is not clear if this is the same as the proposed "Mass Transit Facility". I suggest that this be clarified.**

**RESPONSE:** Revised as requested.

- 49. In regard to proffer II.D.3., in option i), I suggest that the second sentence be deleted as it repeats what is already set forth in proffer II.D.1.**

**RESPONSE:** Corrected to reflect Capital Facilities Credit only for new/expansion spaces.

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50. In further regard to proffer II.D.3., in option ii), I note that the applicant is proposing to provide 300 commuter parking spaces, but at their option they intend to locate such spaces either at the Rt. 28 Commuter Parking Lot, or at the Mass Transit Facility. I note that this does include a provision for County input on such decision. I suggest that a provision be included to allow the County to have a say in how the commuter parking is to be provided, rather than having the County give the applicant a Capital Facilities Credit for a Commuter Parking Lot that the applicant can opt to close at their sole discretion.

RESPONSE: The ability to move the parking area to be located in proximity to the future transit center does not diminish the public value of the Commuter Parking Lot.

51. In further regard to proffer II.D.3., in option ii), in the third line in subparagraph (b), the word "Owner's" should be "Owners'".

RESPONSE: Revised as requested.

52. In further regard to proffer II.D.3., in option ii), in the fourth line of subparagraph (b), the applicant has again included a provision that mandates a County action, this time to vacate a public access easement on the Commuter Parking Lot that they can choose at their sole option to close. I again point out that the proffers are intended to be the voluntary commitments of the applicant and not the County. I suggest that consideration be given to having the applicant reimburse the County for such vacated easement in an amount equivalent to the value of the Capital Facilities Credit, as adjusted to account for inflation.

RESPONSE: The vacation of the County easement will be linked to performance of a proffer by the Owners. As noted in the response to Comment 46 above, the Owners will not receive a Capital Facilities Credit for any replacement parking spaces so there is no need to reimburse for the prior Capital Facilities Credit.

53. In further regard to proffer II.D.3., in the sixth line thereof, the applicant has again referenced a "Transit Center" while the term "Mass Transit Facility" has been used throughout the proffer. I suggest that the applicant's intent be clarified.

RESPONSE: Revised as requested.



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54. In further regard to proffer II.D.3., in the sixth line thereof, the applicant has indicated that the Transit Center “shall continue to be owned by DTC Partners, LLC its successors or assigns , or the POA, and maintenance of such facility(ies) shall be performed by such Owner or the POA”. I suggest that rather than referring to “DTC Partners, LLC” that the term “Owners” be used. I also note that if the facility is owned by the POA, it would necessarily constitute a successor or assign and therefore the reference to the POA is redundant. Additionally, in the last line of the proffer, I suggest that the term “such Owner or the POA” be changed to “the Owners”.

RESPONSE: Revised generally as requested.

55. In regard to proffer II.D.4., in the third line thereof, I suggest that the phrase “in order” be inserted prior to the phrase “incorporate such facilities”. I also suggest that the applicant clarify that if they are to construct structured parking, then such parking structure will be built in the same location as the closed parking area. To this end, I suggest, in the fifth line of the proffer, that the phrase “parking structure on or off” be changed to “parking structure. The temporary parking spaces may be located on or off”.

RESPONSE: Revised as requested.

56. In further regard to proffer II.D.4., in the sixth line thereof, the applicant has indicated that the relocated parking spaces will be located “within Dulles Town Center”. However, nowhere is “Dulles Town Center” defined. I suggest that the area in which the spaces can be relocated be better defined, and that it be reasonably close to the displaced spaces.

RESPONSE: Revised as requested.

57. In regard to proffer II.E., concerning the number of bike racks, I suggest that a minimum number of bikes that can be accommodated by each rack also be specified.

RESPONSE: The size of bike racks will be specified in the proffers.

58. In further regard to proffer II.E., in the sixth line thereof, the applicant has referenced the “Transit Center”. I suggest that if this is the same as the “Mass Transit Facility” that this term be used instead.

RESPONSE: Revised as requested.

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59. In further regard to proffer II.E., in the sixth line thereof, the applicant has indicated that bike rack facilities shall be included at the Rt. 28 Commuter Lot. However, it is not clear what is to happen to such racks if the Rt. 28 Commuter Parking Lot is closed and moved to the Mass Transit Facility. I suggest that this be clarified.

RESPONSE: The proffers have been revised to specify that bicycle parking will be provided at the Mass Transit Center as well as the Commuter Parking Lot.

60. In regard to proffer II.G., in the first two lines thereof, I suggest that the phrase "within 120 days of approval of this application (ZMAP 2007-0001)" be deleted, as it is not completely in accord with the "timing requirements of paragraph I.E.1.b. above" as referenced in the first line, and that reference alone should be sufficient.

RESPONSE: Revised as requested.

61. In further regard to proffer II.G., in the second line thereof, the term "Owner" needs to be changed to "Owners".

RESPONSE: Revised as requested.

62. In further regard to proffer II.G., in the fourth line thereof, I note that the applicant has referenced "Exhibit D attached hereto". However, no Exhibit D was attached. I suggest that this inconsistency be eliminated, and that Exhibit D be provided.

RESPONSE: Revised as requested.

63. In further regard to proffer II.G., in the sixth line thereof, the applicant references "the availability of necessary off-site construction and public access easements", but makes no mention of who is to be responsible for the acquisition of such easements. I suggest that the applicant include a commitment to use good faith efforts to obtain such easements, but that if they are unsuccessful, then they shall request the County to use its power of eminent domain to acquire such easements, with the applicant committing to pay the costs of such eminent domain proceedings, including the price of the easements.



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RESPONSE: The proffer has been revised to provide the Owners will be responsible for acquiring all necessary right-of-way or easements for property within the larger Dulles Town Center project, but not off-site of such project.

64. In further regard to proffer II.G., in the sixth through ninth lines thereof, the applicant indicates that the Owners shall construct off-site sidewalk on the east side of City Center Boulevard. I suggest that the applicant indicate the intent to be responsible for the acquisition of any right of way necessary for the construction of such off-site sidewalk, subject to the same provisions as for the acquisition of the easements, as referenced above.

RESPONSE: The proffer has been revised to provide the Owners will be responsible for acquiring all necessary right-of-way or easements for property within the larger Dulles Town Center project, but not off-site of such project.

65. In regard to proffer II.H., in the first line thereof, I suggest that the word "any" be changed to "each".

RESPONSE: Revised as requested.

66. In further regard to proffer II.H., I note that the applicant has indicated that a request by the County for a warrant analysis can only occur after "any parcel within the property and immediately adjacent to such intersection is developed". The word "property" needs to be capitalized, and I suggest that it be clarified what is intended by the word "developed". It is not clear if this is intended to mean a grading permit has been issued, a parcel has been subdivided, a site plan has been approved, a zoning permit has been issued, or a building has been occupied. Any of these could be construed as "developed". I suggest that this be clarified. I also suggest, in the second line of the proffer, that the phrase "at such time as any" be changed to "provided that at the time of such request a".

RESPONSE: Revised as requested.

67. In further regard to proffer II.H., in the fourth line thereof, the word "Owner" needs to be changed to "Owners". Additionally, in the sixth line of the proffer, the word "county" should be changed to "County".

RESPONSE: Revised as requested.

68. In further regard to proffer II.H., in the list of intersections, I note that one, Dulles Center Boulevard and Kent Drive, is the intersection of a private street with a private street (assuming that Dulles Center Boulevard

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becomes a private road) and I do not know if this presents any specific issues in regard to a warrant study. I urge staff to ensure that this is not an issue.

RESPONSE: Staff response needed.

69. In regard to proffer III., in the fourth through sixth lines thereof, I suggest that the parenthetical "(or such lesser amount per market rate multi-family residential unit if at the time such payment is due any law or County policy then in existence establishes a lower amount for multi-family residential capital facilities or similar contributions)" be deleted.

RESPONSE: Revised as requested.

70. In further regard to proffer III., I suggest that rather than stating that the Owners shall receive a credit against the Capital Facilities Contribution the per unit figure needs to be calculated with such credits taken into account, so that the correct amount can be collected at the time of zoning permit issuance and certainty can be brought to the proffer.

RESPONSE: The proffers could be revised to reflect this approach if the amounts of the credits are agreed upon.

71. In further regard to proffer III., in the tenth line thereof, I suggest that the phrase "Mass Transit Facility" be changed to "Mass Transit Facility and Additional Commuter Parking" to reflect what is stated in proffer II.D. I also suggest that the reference to proffer IV.A.6.a." be changed to "IV.A.6."

RESPONSE: Revised as requested.

72. In further regard to proffer III., in the eleventh line thereof, I suggest that the word "used" be changed to "for use".

RESPONSE: Revised as requested.

73. In regard to proffer IV.A.1., I note that the applicant has indicated the intent to construct a Civic Plaza fronting on either a Type A Road or Type B Road. However, the CDP shows the Civic Plaza as fronting on a Type A Road. Therefore, I suggest that this reference to "or a Type B Road" be deleted as it is inconsistent with the Concept Plan.



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RESPONSE: Note 7 on the CDP recognizes the proffered limitation on alternate locations for the Civic Plaza and Town Green. We see no inconsistency and believe the flexibility stated is important.

74. In further regard to proffer IV.A.1., I note that the applicant has made the location of the Civic Plaza on a Type A Road contingent on the Town Green being located on Type B Road. However, the Concept Plan shows both the Civic Plaza and the Town Green as fronting on the Type A Road, so I suggest that this provision be changed to match what is shown on the Concept Plan.

RESPONSE: See response to Comment 73, above.

75. In further regard to proffer IV.A.1., in the last sentence thereof, the applicant references bonding the construction of the Civic Plaza "with the first site plan". I suggest that this be changed to read "in conjunction with approval of the first site plan".

RESPONSE: Revised as requested.

76. In regard to proffer IV.A.2., concerning the Community Center, I note that the applicant has indicated the intent to construct a minimum 8,000 square foot Community Center in Land Bay TC-3. However, the applicant has indicated that this facility may or may not be available to all residents on the Property, and it may just be limited to the residents of Land Bay TC-3, if the residents of Land Bays TC-1 and TC-2 have "access" to a pool facility and clubhouse. It is not clear whether this would mean the applicant would provide such pool facilities and clubhouses to Land Bays TC-1 and TC-2 or whether "access" merely means permission to use an existing pool somewhere off of the Property. I do not believe that the latter would be acceptable. Yet, there is no commitment to construct any other community centers in Land Bays TC-1 or TC-2. Nor is there any provision to indicate that the applicant will adjust the minimum size of the facility upwards if this Community Center is to serve the entire populace of the Town Center and not just Land Bay TC-3. I suggest that this be considered and that the applicant's intent in regard to "access" to a pool and clubhouse for the residents of Land Bays TC-1 and TC-2 be clarified.

RESPONSE: Proffer IV.A.2 states that "[t]he Owners need not make available the Recreation Facilities to all residential dwelling units outside of Land Bay TC-3 provided that each residential unit outside of Land Bay TC-3 has access to a pool facility and access to an clubhouse meeting the above minimum criteria of 2,500 sf each, **located on the Property** [emphasis added] and within such

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*clubhouse there is an exercise area."* The Applicant clearly intends to provide recreation facilities on the Property. The proffer has been modified to reflect the potential to use the state-of-the-art facilities in the adjacent Remington complex.

- 77. In further regard to proffer IV.A.2., I note that the Design Guidelines differ from this proffer in that it mentions "a community center" for the "amenity needs of the Urban Center's residents", implying that there will be one community center for the whole Town Center. I suggest that the proffers and the Design Guidelines be made consistent.**

RESPONSE: Design Guidelines have been revised as recommended to note that multiple recreation facilities may be provided.

- 78. In further regard to proffer IV.A.2., in the next to last line thereof, I suggest that the phrase "on the Property" be inserted following the word "permit".**

RESPONSE: Revised as requested.

- 79. In regard to proffer IV.A.3., I again note that the applicant is stating that the Town Green may be built on a Type B Road while the Concept Plan clearly shows it as being on a Type A Road. I suggest that this proffer be amended to accurately reflect what is shown on the Concept Plan.**

RESPONSE: See response to Comment 73, above.

- 80. In further regard to proffer IV.A.3., in the last sentence thereof, I suggest that the phrase "No hardscape portions of the Town Green that are between a building façade and the edge of building sidewalk need to be bonded until the building adjacent to such portion of the Town Green is constructed" be changed to read "The hardscape portions of the Town Green that are between a building façade and the edge of building sidewalk need to be bonded prior to approval of the first site plan for the building adjacent to such portion of the Town Green".**

RESPONSE: Revised as requested.

- 81. In regard to proffer IV.A.5., I note that the applicant has indicated that the Community Center, Civic Plaza, Town Green and Hadley's Park shall be conveyed to (or subject to a use and maintenance easement in favor of) and maintained by "a POA". This leaves me with a question as all other references to the Property Owners Association refer to it as "the POA". I**



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**suggest that the applicant clarify their intent in regard to the nature of the homeowners' association/property owners' association structure they intend to have on the Property.**

RESPONSE: Proffer is revised to use "*the*" instead of "*a*."

- 82. In regard to proffer IV.A.6.a., in the second line thereof, I suggest that the phrase "within 120 days of approval of this application (ZMAP 2007-0001)" be deleted in order to avoid any conflicts in timing between what is stated here and what is stated in the referenced paragraph I.E.1.c.**

RESPONSE: Revised as requested.

- 83. In regard to proffer IV.A.6.b., in the second and third lines thereof, the applicant has indicated that they should received a Capital Facilities Credit for the dedication of Vestal's Gap Park II based on the value of land and the facilities constructed thereon. Again, I suggest that this value be determined prior to the approval of this application and that the proposed Capital Facilities Contribution be adjusted accordingly.**

RESPONSE: Acknowledged. An appraisal will be provided.

- 84. In further regard to proffer IV.A.6.b., I note that the applicant shall reserve the right to "obtain" desired easements for construction and maintenance of utilities. I suggest that this statement is rather vague and that the intent should be clarified.**

RESPONSE: A potential utility corridor will be designated on the Concept Plan.

- 85. In further regard to proffer IV.A.6.b., the applicant states that they shall ensure that the Vestal's Gap Park II site is generally free from trash and debris "upon conveyance to the County as of the date of these Proffers". This statement is internally inconsistent as it references two different times, the time of "conveyance" and "the date of these Proffers". I suggest that the intent be clarified.**

RESPONSE: The proffer has been revised to delete "*as of the date of these proffers*."

- 86. In regard to proffer IV.A.6.c., in the first line thereof, the applicant uses the phrase "interpretative" markers, while in the fourth line these are referred to as "interpretive" markers. I suggest that a consistent term be used.**

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RESPONSE: The correct word is "*interpretive*," and the proffer has been so revised.

- 87. In regard to proffer IV.A.6.d., in the first line thereof, the word "Owner" needs to be changed to "Owners".**

RESPONSE: Revised as requested.

- 88. In further regard to proffer IV.A.6.d., I note that the applicant has proffered to construct 5 interim parking spaces in one of two locations. I suggest that the County should have some input as to where these spaces are located, and therefore recommend that this proffer be so revised.**

RESPONSE: Revised as requested.

- 89. In further regard to proffer IV.A.6.d., I also note that the interim parking spaces are not to be provided until 12 months after the dedication of the park site. I question why there is such a large delay in the provision of the interim spaces, and I suggest that such space should be made available at the time the park is dedicated.**

RESPONSE: The intent was to allow time for the Owner to obtain required permits. Revisions have been made to the proffer to address the concern.

- 90. In further regard to proffer IV.A.6.d., in the seventh line thereof, the word "Owner" needs to be changed to "Owners".**

RESPONSE: Revised as requested.

- 91. In further regard to proffer IV.A.6.d., I note that if either the interim or permanent parking spaces are provided off-site of the park nothing has been provided nothing in the proffer to indicate that a public access easement for the parking, or from the parking to the park entrance, will be provided. I suggest that this be addressed.**

RESPONSE: A commitment to providing a public access easement has been incorporated into this proffer.

- 92. In regard to proffer IV.A.7.a., in the first line thereof, I suggest that the phrase "an occupancy" be changed to "a zoning".**

RESPONSE: Revised as requested.



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93. In further regard to proffer IV.A.7.a., in the second line thereof, I suggest that the phrase “, for review and approval,” be inserted following the reference to the Department of Building and Development”.

RESPONSE: This proffer has been revised to state that the Re-vegetation plan will be provided to B&D for review and determination that it is in conformance with Sheet 18.

94. In further regard to proffer IV.A.7.a., I note that the applicant intends to submit a Re-Vegetation plan for Sections C, D, E, and F as depicted on the Stream Valley Plan. I suggest that the applicant identify the Stream Valley Plan as Sheet 18 of the Concept Plan. Also, I note that Sections C, D & E are all off-site from this application. I suggest that the applicant address how they intend to ensure that the off-site sections are planted in accord with the Re-Vegetation Plan.

RESPONSE: This proffer has been revised to state that the Re-vegetation plan is set forth as the Stream Valley Plan on Sheet 18.

Revised as requested. The proffer will be revised to provide for the Applicant to obtain the consent of the affected owners, which are affiliates of Lerner.

95. In regard to proffer IV.A.7.b., in the second line thereof, I suggest that the word “approved” be inserted prior to the phrase “Re-Vegetation Plan”.

RESPONSE: Revised to address the concern.

96. In further regard to proffer IV.A.7.b., in the second line thereof, I note that the applicant mentions the removal of construction debris “from the location noted on Sheet 18”. I do not see any such location noted on Sheet 18. I suggest that this inconsistency be eliminated.

RESPONSE: Sheet 18 has been revised to reflect this stated location.

97. In further regard to proffer IV.A.7.b., in the fourth line thereof, I suggest that the phrase “approved as being” be inserted prior to the word “consistent”.

RESPONSE: Revised to address the concern.

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98. In regard to proffer IV.A.7.c., I note that the applicant uses the phrase “hardscape crossings of the Stream Valley”. I suggest that the applicant clarify what they are referencing by this phrase. I also note that they have indicated that they “reserve the right to construct” but they do not commit to construct such features. I suggest that this reservation of right be stated as an affirmative responsibility.

RESPONSE: Proffer IV.A.8 defines the hardscape crossings and commits to an outside timing trigger for each.

99. In regard to proffer IV.A.8., in the third line thereof, I suggest that the word “combined” be inserted prior to the phrase “Land Bays TC-1 and TC-2”.

RESPONSE: Revised as requested.

100. In further regard to proffer IV.A.8., in the second paragraph thereof, the applicant references “a location between” the Pedestrian Cap and Dulles Center Boulevard. I suggest that the applicant refine this to be the location shown on Sheet 18.

RESPONSE: This crossing must meet many design constraints and so flexibility for location is critical. A note could be added to the CDP to restate this approach to flexibility. Would staff recommend a different approach to making a clear commitment but allowing for the crossing to be located to meet the connectivity needs on each side of the stream valley?

101. In further regard to proffer IV.A.8., I note that one of the timing triggers for the submission of a site plan for the Pedestrian Bridge is tied to “the site plan for any building adjacent to the terminus of the bridge in Land Bay TC-2”. I note that Sheet 18 does not show a building adjacent to the terminus of the bridge in Land Bay TC-2. I suggest that it be clarified as to what the applicant intended by use of the word “adjacent”. I also suggest that the word “any” be changed to “the first” and that timing for the actual construction of the bridge, and not just the timing of the site plan submission, be identified.

RESPONSE: Sheet 18 will be revised to be consistent with the CDP for the town center. Further, the proffer will be revised to indicate that an application to construct the bridge will be submitted with the site plan of the first building adjacent or containing the land on which the bridge terminates.



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102. In further regard to proffer IV.A.8., in the sixth line thereof, I suggest that the word "occupancy" be changed to "zoning". Additionally, in the seventh line, I suggest that the phrase "development on the Property" be inserted following the phrase "non-residential".

RESPONSE: Revised as requested.

103. In regard to proffer IV.A.9., I note that the applicant has proffered to provide the County with a lease of 800 square feet of enclosed space for the establishment of a public safety facility. I question the adequacy of the size of the space and urge staff to determine if such a small space can be used for a public safety facility.

RESPONSE: [Need response from staff]

104. In further regard to proffer IV.A.9., in the seventh line thereof, the word "Owners" needs to be changed to "Owners'".

RESPONSE: Revised as requested.

105. In further regard to proffer IV.A.9., in the last two lines thereof, I suggest that the phrase "within sixty days of such notification" be changed to at least provide "within such 90 day period".

RESPONSE: Revised as requested.

106. In regard to proffer V., in the third and fourth lines thereof, I suggest that the phrase "and shall be used" be changed to "for use".

RESPONSE: Revised as requested.

107. In regard to both proffers VI.A. and VI. B., in the third line of each, I suggest that a comma be placed after the first use of the word "County". I also suggest, in the ninth line of each proffer, that the phrase "and/or" be changed to "and".

RESPONSE: Revised as requested.

108. In regard to proffer VII., concerning the Owner's Association, the applicant references the "Dulles Town Center Owner's Association" as the umbrella association for the Dulles Town Center Project. It is, however, not clear how this relates to the requirements of the existing proffers to have a Homeowners' Association and a Property Owners' Association. I

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**suggest that this be clarified. It is also unclear how this existing corporation, whose membership consists of off-site landowners, is going to be made to be responsible for the ownership and maintenance requirements for portions of the Property, as set forth in these proffers, when it is already existing and these new requirements were not contemplated by this corporate entity's incorporation documents and this corporate entity is not a party to this application. I further suggest that this be clarified. It may be advisable to include a requirement that the POA must submit revised documents, prior to the approval of the first site plan or record plat on the Property, whichever is first in time, indicating that it can and will assume the responsibilities described in these proffers.**

RESPONSE: The existing proffer to create both a Homeowners Association and Property Owners Association has been fulfilled. The existing associations shall have no obligation to perform any items unless they expressly assume such obligation in writing.

- 109. In further regard to proffer VII., at a minimum, I suggest that it be clarified that all of the Property shall be subject to the POA and that all landowners within the Property shall be members of the POA.**

RESPONSE: Revised as requested.

- 110. In further regard to proffer VII., and inasmuch as the applicant intends to place significant costs and responsibilities for maintenance of facilities on the POA, I question why there is nothing in the proffers to provide for some capitalization of the POA so that it could assume such responsibilities.**

RESPONSE: The Association can require any desired capitalization as a condition to its assumption of any obligations.

- 111. In further regard to proffer VII., I note that the applicant states that they shall be free to create additional owners' associations or sub associations. Theoretically then the applicant could place the responsibility for maintenance of a major facility, such as Dulles Center Boulevard, onto a sub-association, and I do not believe that this would be advisable.**

RESPONSE: It may be appropriate for a sub-association of all of the parcel owners along Dulles Center Boulevard to maintain such road.

- 112. In further regard to proffer VII., I suggest that the applicant indicate that the documents for the POA showing that the POA shall assume responsibility, which will need to be endorsed by the POA corporate body,**



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**will be submitted for review and approval by the County prior to approval of the first site plan or record subdivision on the Property, whichever is first in time.**

**RESPONSE:** Again, the existing associations will have no obligations unless they expressly assume such obligations in writing.

- 113. In regard to proffer VIII., in the fourth and fifth lines thereof, I suggest that the phrase “into either the existing Owner’s associations documents for the POA or the documents of any additional associations formed” be changed to “Into the existing POA’s documents and into the documents of any additional associations formed”.**

**RESPONSE:** Revised as requested.

- 114. In further regard to proffer VIII., I suggest that the proffer be amended to specifically include a declaratory statement indicating that development on the Property shall conform to the Design Guidelines.**

**RESPONSE:** Proffer will be revised appropriately.

- 115. In regard to proffer IX.A.1., I note that the applicant is committing to establishing Tree Conservation Areas in areas off-site of the Property. I suggest that the applicant clarify how they intend to ensure conformance with this proffer with off-site land owners.**

**RESPONSE:** Off-site owners are affiliates of Lerner.

- 116. In further regard to proffer IX.A.1., in the fourth and fifth lines thereof, I suggest that commas be placed around the phrase “as allowed by the County”. Additionally, in the fifth line of the proffer, I suggest that the phrase “and shall be permitted” be changed to “only”.**

**RESPONSE:** Revised as requested.

- 117. In further regard to proffer IX.A.1., in the seventh line thereof, I suggest that the phrase “pedestrian bridge and trails and” be changed to “pedestrian bridge in the location shown on Sheet 18, and trails as shown on the CDP.”**

**RESPONSE:** Revised as requested.

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- 118. In regard to proffer IX.A.2., in the first line thereof, I suggest that the word "all" be inserted at the beginning of the proffer. In addition, I suggest that the phrase "on the Property" be inserted following the phrase "site plan applications".**

**RESPONSE:** Revised as requested.

- 119. In further regard to proffer IX.A.2., I suggest that it be clarified how this proffer shall apply to the off-site Tree Conservation Areas.**

**RESPONSE:** See response to Comment 115.

- 120. In regard to proffer IX.A.3., in the last sentence thereof, the applicant uses the phrase "the Species" but then only discusses the placement of replacement trees. I believe there may be something missing that addresses providing replacement trees that are the same species as the ones being replaced. I suggest that this be clarified.**

**RESPONSE:** The term "*species*" has been deleted from the proffers. County policy is for the use of native vegetation/trees and this proffer commits to the use of native, non-invasive deciduous trees.

- 121. In regard to proffer IX.A.4., I note that it states that the applicant shall "seek to amend" the POA documents to include a provision that prohibits the removal of trees in Tree Conservation Areas. Elsewhere throughout the proffers, the applicant merely says that the POA shall be responsible for certain matters, and makes no mention of its being able to amend the documents or to even "seek to amend" the documents. So, it is not clear why for this simple provision the applicant must "seek to amend" the documents. I suggest that this be clarified. Additionally, this provision would apply to on-site and off-site trees. I suggest that it be affirmatively stated that for the on-site Tree Conservation Areas this provision shall apply.**

**RESPONSE:** The County will already have the ability to enforce the Tree Conservation Areas so the POA is not needed as an enforcement agency. This proffer has been deleted.

- 122. In further regard to proffer IX.A.4., I suggest that the applicant submit this amendment to the POA documents to the County for review and approval prior to the approval of the first record subdivision or site plan application on the Property, whichever is first in time.**



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**RESPONSE:** See response to Comment 121, above.

- 123. In regard to proffer IX.B., I note that the applicant indicates that a Tree Conservation Plan shall be submitted for each site plan or construction plans and profiles for development on parcels containing Tree Conservation Area. I suggest that it be clarified how this applies to off-site areas depicted as Tree Conservation Areas, and how this will be applied to Land Bay OP-1, which is supposed to have Tree Conservation Area, although it is not shown on the Concept Plan.**

**RESPONSE:** See response to Comment 115. Proffer has been revised to address OP-1 and off-site parcels to be subject to Tree Conservation Areas.

- 124. In regard to proffer IX.C., in the first line thereof, I suggest that the phrase "make a good faith effort to" be deleted. I also suggest that the applicant commit to mitigating their wetlands impacts within Loudoun County.**

**RESPONSE:** Revised as requested as to deletion of language.

- 125. In regard to proffer IX.D., wherein the applicant claims that an improvement in Water Quality Volume shall be credited as a BMP, I urge staff to review the acceptability of such a provision.**

**RESPONSE:** Need staff response.

- 126. In regard to proffer IX.E.1., in the first line thereof, I suggest that the word "building" be changed to "zoning". Additionally, in the second line, I suggest that the word "Owner" needs to be changed to "Owners".**

**RESPONSE:** Revised as requested.

- 127. In regard to proffer IX.E.3., in the fourth line thereof, I suggest that the word "Owner" needs to be changed to "Owners".**

**RESPONSE:** Revised as requested.

- 128. In further regard to proffer IX.E.3., in the last two lines thereof, the applicant has stated the intent to submit a statement listing all Energy Star qualified components "to be installed in each unit" prior to the issuance of the first residential certificate of occupancy. It seems that this list should be submitted with application for the certificate of occupancy in order to provide something to verify that it has been done.**

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RESPONSE: The water conservation and energy star proffers have been revised as recommended.

- 129. In further regard to proffer IX.E.3., in the first line of the second paragraph thereof, I suggest that the word "Owner" needs to be changed to "Owners". I also question how this provision committing to energy efficient lighting is to be monitored and enforced. I suggest that this be clarified.**

RESPONSE: Revised to provide list of appliances to be installed prior to first residential occupancy permit and right of County to inspect.

- 130. In regard to proffer X., I note that the applicant is warranting that they own all interests in the Property. However, they do not own any interest in the right of way they want to have abandoned and then incorporated into their development. I do not see how the right of way, if it is abandoned would become subject to these proffers.**

RESPONSE: Agreed.

- 131. I note that the Concept Plan and the Design Guidelines indicate the presence of an outdoor public market, but there is nothing in the proffers to address this. I suggest that the intent be clarified.**

RESPONSE: The provision of the public market is optional and the Concept Plan will so note.

- 132. These proffers will need to be signed by all landowners, and be notarized, prior to the public hearing on this application before the Board of Supervisors.**

RESPONSE: We understand and will provide a signed, notarized set of proffers prior to the Board public hearing.